

Spec - In this gazette is contained
published the judgment of the Himachal
Pradesh High Court on Election Petition
No 8 of 1972 against. Shri Suresh Kumar P.N.A.
declaring his election to H.P. Vidhan Sabha

रजिस्टर्ड नं० एस० एम० 13.



2.11.74

राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

खण्ड 22] शिमला, शनिवार, 26 अक्टूबर, 1974/4 कार्तिक, 1896 [संख्या 43

विषय-सूची

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भाग 3	अधिनियम, विधेयक और विधेयकों पर उच्च न्यायालय के वेदने वैधानिक नियम तथा हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश हाई कोर्ट के न्यायाधीशों और कनिष्ठ न्यायाधीशों द्वारा अधिसूचित आदेश इत्यादि	1803—1804
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—	अनुपूरक	

26 अक्टूबर, 1974/4 कार्तिक, 1896 को समाप्त होने वाले सप्ताह में निम्नलिखित विज्ञप्तियां 'असाधारण राजपत्र, हिमाचल प्रदेश' में प्रकाशित हुईं:-

विज्ञप्ति की संख्या	विभाग का नाम	विषय
No. 33-67/73-GS (9), dated the 11th October, 1974.	Governor's Secretariat	Dismissing the petition presented by Shri Madhvindra Sharma Advocate, Simla alleging that Dr. Y. S. Parmar had incurred disqualification under Article 191 of the Constitution for being a member of H. P. Vidhan Sabha.
No. LSG-C(9)-23/74, dated the 16th October, 1974.	Local Self Government Department	Amendments in the Toll Tax Schedule made by the Municipal Committee, Kangra.
संख्या कनर-378/73, दिनांक 10 अक्टूबर, 1974	कार्यालय जिलाधीश किन्नौर मण्डल, कल्पा	पंचायत समिति, निचार तथा पूह के सहविकल्पित सदस्यों के नामों की सूचना।

भाग I—वैधानिक नियमों को छोड़ कर हिमाचल प्रदेश के राज्यपाल और हिमाचल प्रदेश हाई कोर्ट द्वारा अधिसूचनाएं, इत्यादि

हिमाचल प्रदेश सरकार PERSONNEL DEPARTMENT NOTIFICATION

Simla-171002, the 4th October, 1974

No. 6-1/62-DP(Apptt.-II).—The Governor, Himachal Pradesh after consultation with the High Court, is pleased to order that the number of selection grade posts in the Himachal Pradesh Judicial service shall be 20% of the total number of posts included in the cadre, as against 10% of present w. e. f. 1-3-1973.

AJAY PRASAD,
Joint Secretary.

AGRICULTURE DEPARTMENT NOTIFICATION

Simla-171002, the 9th October, 1974

No. 16-83/70-Agr. (Sectt.).—In continuation of Gazette Notification of even number, dated the 29th July, 1974 the Governor, Himachal Pradesh is pleased to order that the appointment of Shri B. S. Ram Kapoor, Agricultural Inspector on the post of Assistant Agricultural Marketing Officer (Ex-cadre post) will be treated as *ad hoc* appointment till such time the post of Assistant Agricultural Marketing Officer is filled in on regular basis, or upto 31st January, 1975 whichever is earlier.

K. C. PANDEYA,
Secretary.

ANIMAL HUSBANDRY DEPARTMENT NOTIFICATION

Simla-2, the 11th October, 1974

No. 23-5/69-AH(Sectt.).—The Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to accord *ex-post-facto* sanction to the continuance of *ad hoc* appointment of Shri J. S. Bhalla, as Deputy Director of Animal Husbandry, Palampur, w. e. f. 1-10-69 to 6-8-74.

S. M. VERMA,
Under Secretary.

CO-OPERATION DEPARTMENT NOTIFICATIONS

Simla-2, the 8th October, 1974

No. Co-op-B(3)-23/74-Personal.—On the recommendations of the Himachal Pradesh Public Service Commission, the Governor, Himachal Pradesh is pleased to appoint, on probation for a period of two years, Shri Gian Chand Vaidya, as District Co-operative and Supplies Officer in the Co-operative Department in the scale of Rs. 350-25-500-30-90/530-830-35-900 (Class-II Gazetted) w. e. f. 1-7-1974.

His confirmation after the successful completion of the probationary period will depend upon the availability of permanent posts. Further, his seniority will be fixed as per roster at the ratio of 50:50 i.e. amongst the promotees and direct recruits of 1:1 i.e. a 1:1 ratio.

Simla-2, the 8th October, 1974

No. 1-39/73-Co-op(s).—In partial modification of this Department notification No. 1-39/73-Co-op(s), dated the 28th August, 1974, the Governor, Himachal Pradesh is pleased to post Shri Devinder Singh Vidyarthi as District Co-operative and Supplies Officer (Development) at Headquarters Simla vice Shri B. C. Katoch proceeded on leave, till further orders.

The Governor, is further pleased to order that Shri Kamal Prasad shall continue as District Co-operative and Supplies Officer, on *ad hoc* basis at Hamirpur, till further orders.

Simla-2, the 9th October, 1974

No. 5-2/70-Co-op(s).—In exercise of the powers conferred under section 3 (1) of the Himachal Pradesh Co-operative Societies Act, 1968 (Act No. 3 of 1969) the Governor, Himachal Pradesh is pleased to appoint District Co-operative & Supplies Officer (Banking), Himachal Pradesh stationed at headquarters, Simla as Assistant Registrar to assist the Registrar Co-operative Societies Himachal Pradesh in administration of the said Act and is further pleased to confer on the said officer under section 3 (2) of the said Act all powers of the Registrar exercisable by him under sections 33, 61, 62, 64, 65, 66, 67, 71, 72, 73, 74, 86, 87 & 89 of the Act *ibid*.

By order,

M. S. MUKHERJEE,
Secretary.

FOREST DEPARTMENT NOTIFICATION

Simla-171002, the 25th/28th September, 1974

No. 8-4/73-SF.—Whereas it is considered necessary that portion of the protected forests specified in the notification shall be closed for a period of 15 years and that the rights of private persons in or over such portion shall be suspended during such period for the purpose of regeneration and artificial restocking in order to check erosion and whereas the remainder of such forests is sufficient and in a locality reasonably convenient for the due exercise of the rights suspended in the portion so closed and whereas it is further considered necessary to prohibit the doing of any of all of the acts mentioned in clause (c) of section 30 of the Indian Forest Act, 1927.

Now, therefore, in exercise of the powers conferred by section 30 of the Indian Forest Act (XVI) of 1927, the Governor of Himachal Pradesh is pleased to declare that the portion of protected forests situated in Kunihar Forest Division as per schedule given below, shall be closed for a period of 15 years from the date of this notification and that the rights of private persons in or over such portions shall remain suspended during the said period of 15 years and he is further pleased to prohibit from the date of this notification:

- (i) the quarrying and removal of stone,
- (ii) the burning of lime and charcoal,
- (iii) the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose,
- (iv) grazing by all kinds of animals throughout the year,
- (v) lopping and cutting of trees and bushes throughout the year;

- (vi) cutting of grass throughout the year, and
(vii) the collection or subjection to any manufacturing process, or removal of any forest produce in or over or from the portion so closed.

Note.—Grass cutting may be permitted free to right holders on permits on such terms and conditions as may be made and imposed at the discretion of the DFO, Kunihar.

SCHEDULE

Sl. No.	Tehsil	Name of Range	Period	Name of Forest
1	2	3	4	5
1.	Nagarh	Ramshahar	15 years	Bankah DPFI

Total area of Forest in Ha.	Area to be closed in Ha.	Khasra No.	Boundaries
6	7	8	9

56 Ha.	30 Ha.	North Vill. Dhar South Vill. Kacola Nihala East State line B. P. 10-2424 West Vill. Kacola Uprala
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CORRIGENDA

Simla-2, the 30th September, 1974

No. 5-11/70-SF. In a notification No. 5-11/70-SF dated 27-3-74 with regard to sanctuaries in Himachal Pradesh, please read as under:—

- (a) Against serial No. 5 under column No. 4 of the Schedule to the notification in 6th line, figures and words "1700 Feet" be substituted by figures and words "1700 Feet".
- (b) Against serial Nos. 14 & 15 in column No. 1 of the Schedule, word and figure "Darang Ghatti I" and "Darang Ghatti II" be substituted by "Darang Hatti I" and "Darang Hatti II" respectively.

Simla-2, the 7th October, 1974

No. 1-71-SF (II). The figures regarding the time scale appearing in the fourth line of this office order of even number, dated the 28th June, 1974, may please be read as: "350-25-500-30-500-30-830-35-900".

Simla-2, the 7th October, 1974

No. 25-573-SF. The representative of Central Council of India Medicines, New Delhi shown as serial No. 1 as Official member of the Forest Utilisation Committee vide this Government Notification No. 25-573-73-SF dated the 22nd November, 1974 will now be a Non-official member of the said Committee.

By order,
P. K. MATTOO,
Secretary.

NOTIFICATIONS

Simla-2, the 7th October, 1974

No. 1-261/69-SF. In supersession of this office notification of even number, dated the 5th March, 1974, the Governor, Himachal Pradesh, is pleased to order that Shri Veda Parkash, P.P.F.S., Divisional Forest Officer, Publicity Division, Simla shall retire from Government service on 30-1-74 (A.N.), on his attaining the age of superannuation.

Simla-2, the 7th October, 1974

No. 1-180/69-SF (Estt.). In supersession of this office notification of even number, dated the 13th March, 1974, the Governor, Himachal Pradesh, is pleased to order that Shri Gopinath, P.P.F.S., shall retire from Government service on 31-10-74 (A.N.), on his attaining the age of superannuation.

P.P.K.MATTOO

Secretary

INDUSTRIES DEPARTMENT

NOTIFICATIONS

Simla-2, the 7th October, 1974

No. 1-6074/S-51. Whereas it appears to the Governor, Himachal Pradesh, that land is likely to be required to be taken by the Government at the public expense for a public purpose namely for the extension of industrial area at Babotiwala (District Solan), it is hereby notified that land in the locality described below is likely to be acquired for the above purpose.

2. 2. This notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

3. 3. In exercise of the powers conferred by the aforesaid section the Governor of Himachal Pradesh is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

4. 4. Any person interested who has any objection to the acquisition of any land in the locality may within thirty days of the publication of this notification file an objection in writing before the Land Acquisition Collector, Solan, (Sub-Divisional Officer, Civil), Solan District Solan.

SPECIFICATION

District SOLAN

Tehsil: KASABALI

Village & Tikka	Khasra No.	Area
1	2	Big Bis 3 4
BAROTWALA	361/24	3 8
	390/3	0 9
	391/3	2 8
	241/1	2 1
	31 3	4 18
	24 2	6 10
	396/8	1 19

1	2	3	4
	397/8	2	14
	24/1/4	1	12
	24/1/6	1	80
	34/1	8	7
	30/1	2	4
	33	5	16
	30/2	5	08
	6	3	7
	9/2	3	13
	29	0	8
	9/1	5	15
	1/1/2	2	13
	387/2 min	1	4
	388/2 min	1	19
	39 min	2	2
	40 min	0	16
	387/2 min	0	12
	388/2 min	0	19
	40 min	0	8
	39 min	0	1
	387/2 min	0	12
	388/2 min	1	19
	39 min	1	1
	40 min	0	8
	393/4 min	0	7
	394/4 min	2	6
	362/24 min	1	6
	24/1/5 min	1	6
	32 min	2	7
	38 min	2	17
	339/7 min	4	0
	338/7 min	4	17
	37	2	5
	5	0	13
	415/20	0	14
	416/28	1	11
Total plots ..	43	101	8

P. K. MATTOO, Secretary.

Simla-2, the 9th October, 1974

No. 3-35/69-SI (SSIC).—In continuation of this Department's Notification No. 3-35/69-SI (SSIC), dated the 1st July, 1974 the Governor of Himachal Pradesh is pleased to appoint Shri A. N. Vidyarthi as Managing Director of the Himachal Pradesh State Small Industries and Export Corporation Ltd., Simla with effect from 21st September, 1974 (afternoon).

CERTIFICATES OF APPROVAL

Simla-2, the 9th October, 1974

No. 8-27/74-SI(MM).—This is to certify that Shri Mahesh Kumar Son of Shri Ram Prakash, Village and P. O. Sataun, Tehsil Paonta, District Sirmur Himachal Pradesh is approved as a person who is qualified to acquire prospecting licence and mining lease in respect of minerals except petroleum and natural gas in the territory of Himachal Pradesh under the Mineral Concession Rules, 1960.

This Certificate shall be valid upto 31st December, 1974.

Simla-2, the 9th October, 1974

No. 8-26/74-SI(MM).—This is to certify that Shri

Dwarka Nath Nayar, Mohalla a Bangotu, Chamba District, Himachal Pradesh is approved as a person who is qualified, to acquire prospecting licence and mining lease in respect of minerals except petroleum and natural gas in the territory of Himachal Pradesh under the mineral Concession Rules, 1960.

This Certificate shall be valid upto 31st December, 1974.

By order,
P. K. MATTOO,
Secretary.

LABOUR DEPARTMENT

NOTIFICATION

Simla-171002, the 7th October, 1974

No. 10-44/73-SI.—Whereas the Governor, Himachal Pradesh is of the opinion that an industrial dispute exists between a workman namely Shri Raghu Nath Conductor and the General Manager, Mandi Kulu Road Transport Corporation Mandi, regarding the matter herein after appearing; And whereas the Governor, Himachal Pradesh considers it desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Section 12 (5) of the Industrial Disputes Act, 1947 (14th of 1947), the Governor of Himachal Pradesh hereby refers to the Labour Court, Himachal Pradesh, Simla constituted under section 7 of the Industrial Disputes Act, 1947, the matter specified below for adjudication:—

“Whether the act of General Manager, Mandi-Kulu Road Transport Corporation in dispensing with the services of Shri Raghu Nath Conductor without issuing any notice amounts to discharge simpliciter or it amounts to termination/dismissal and whether the above act of the management is justified? If not to what relief and exact amount of compensation Shri Raghu Nath Conductor is entitled to?”

By order,
P. K. MATTOO,
Secretary.

MULTIPURPOSE PROJECTS AND POWER DEPARTMENT

NOTIFICATION

Simla-2, the 30th September/3rd October, 1974

No. 9-2/72-MPP(Sectt.).—In partial modification to this Department notification of even number dated the 21st July, 1973 and in pursuance of sub-section (1) and (2) of section 16 of the Electricity (Supply) Act, 1948, the Governor, Himachal Pradesh is pleased to appoint the following additional members to represent the class noted against each in the H. P. State Electricity Consultative Council for a period of two years from the date of issue of this notifications:—

1. Local Self Government. Shri Sant Ram M. L. A. (Kangra).
2. Other Industries Smt. Vidya Stokes, M.L.A. (Simla).
3. General Consumers of Electricity. Shri Rangila Ram, M. L.A. (Mandi).
4. Agriculture Shri Sita Ram, M.L.A. (Bilaspur).

Membership of the Administrator, Simla Corporation is ceased on account of taking over the "Electricity Supply" function of Corporation by H.P.S.E.B.

By order,
L. HMINGLIANA TOCHHAWNG,
Secretary.

PLANNING DEPARTMENT

NOTIFICATION

Simla-2, the 5th October, 1974

No. 9-34/71-Plan (Estt).—Cons:quent upon his substantive appointment to Grade IV post of the Indian Statistical Service, with effect from the 1st April, 1974, the Governor, Himachal Pradesh, is pleased to terminate in the lien of Shri R. D. Agrawal from the post of Statistician in the Directorate of Economics and Statistics, from the same date, viz. 1-4-1974.

By order,
B. K. SHARMA,
Secretary.

PUBLIC WORKS DEPARTMENT

NOTIFICATION

Simla-171002, the 31st August, 1974

No. 9-13/73-PW(B).—Whereas it appears to the Governor of Himachal Pradesh that land is likely to be acquired to be taken by Government at the public expense for a public purpose, namely for the C/O Palampur-Bir Road km. 21 & 22 from Bir side, it is hereby notified that the land in the locality described below is likely to be required for the above purpose.

This notification is made under the provisions of section 4 of the Land Acquisition Act, 1894 to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor, Himachal Pradesh is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to entre upon and survey any land in the locality and do all other acts required or permitted by that section.

Any person interested, who has any objection to the acquisition of any land in the locality may, within 30 days of the publication of this notification, file an objection in writing before the Land Acquisition Collector, H. P. P. W. D. Kangra.

SPECIFICATION

District : KANGRA

Tehsil : PALAMPUR

Mauza	Tikka	Khasra No.	Area
1	2	3	K. M. 4 5
DUOL	FATANAR	533/1	0 8
		534/1	0 15
		461/1	0 17
		460/1	0 8
		455/1	0 2
		454/1	0 19
		389/1	0 3

1	2	3	4	5
		336/1	1	1
		386/1	0	9
		385/1	0	16
		393/1	0	14
		417/1	0	1
		417/2	0	4
		416/1	0	4
		420/1	0	5
		413	0	8
		425/1	0	7
		411/1	0	0
		412/1	0	1
		484/1	0	1
		186/1	0	7
		185/1	0	15
		184/1	0	3
		387/1	0	1
		182/1	0	7
		177/1	0	1
		175/1	0	3
		174/1	0	7
		418/1	0	15
Tota .. Kitta 29			12	3

LANOUND	ROOPA	528/1	0	7
		542/1	0	1
		541/1	0	1
		539/1	0	1
		534/1	0	1
		535/1	0	0
		536/1	0	4
		538/1	0	0
		537/1	0	2
		506/1	0	4
		507/1	1	2
		508/1	0	13
		505/1	0	2
		509/1	0	1
		510/1	0	1
		452/1	1	17
		490/1	2	1
		489/1	1	18
		409/1	0	0
		491/1	0	2
		405/1	0	9
		401/1	0	9
		402/1	0	5
		400/1	0	5
		587/1	0	3
		587/1	0	2
		391/1	0	0
		366/1	0	9
		335/1	0	3
		334/1	0	6
		333/1	0	1
		332/1	0	1
		331/1	0	3
		337/1	0	2
		324/1	0	1
		326/1	0	3
		321/1	0	7
		316/1	0	9
		313/1	0	3
		308/1	0	8
		309/1	0	4
		305/1	0	4
		306/1	0	

1	3	3	4	5
		307/1	0	2
		304/1	0	2
		302/1	0	1
		300/1	0	1
		297/1	0	0
		296/1	0	0
		290/1	0	0
		293/1	0	1
		294/1	0	2
		354/1	11	8
Total .. Kitta	78		38	15
JAUUD ROOPA	388/1		0	2
	384/1		0	6
	380/1		0	7
	375/1		0	3
	377/1		0	3
	376/1		0	1
	374/1		0	3
	373/1		0	6
	371/1		0	3
	369/1		0	3
	368/1		0	9
	367/1		0	6
	360/1		0	1
	366/1		1	8
	364/1		0	7
	349/1		0	12
	348/1		0	5
	347/1		0	3
	345/1		0	0
	340/1		1	11
	350/1		0	1
	325/1		0	0
	339/1		4	13
	338/1		0	6
	337/1		0	10
Total .. Tikka Fatajar		12	3	
Tikka Roopa		38	15	
Total		50	18	

By order,
GANGESH MISRA,
Secretary.

CORRIGENDUM

Simla-171002, the 1st October, 1974

No. 1-25/69-PW"A".—The words "Asstt. Engineer, Kulu Sub-Div. No. I" may please be substituted for words "Asstt. Engineer, Bhunter" whereso ever appearing in this office Notification of even number, dated the 31st August, 1974.

NOTIFICATIONS

Simla-171002, the 3rd October, 1974

No. 1-31/71-PW"A".—The Governor, Himachal Pradesh is pleased to order that Shri J. C. Sharma, Asstt. Engineer, Investigation Sub-Division, Dharamsala, H.P.P.W.D. shall retire from Government service on attaining the age of superannuation w.e.f. 31st January, 1974 (A. N.).

Simla-2, the 4th/7th October, 1974

No. 1-98/70-PWD.—In continuation to this office Notification of even number, dated the 30th September, 1974, it is hereby ordered that charge of the Flood Control Division, held by Shri R. G. Arya, Executive Engineer will now be held by Shri I. C. Goel, S.O.W., Irrigation Circle, Kasumpti in addition to his own duties till further orders.

Simla-2, the 8th October, 1974

No. 1-98/70-PWD.—The Governor, Himachal Pradesh on the recommendations of the Departmental Promotion Committee held on the 27th to 29th December, 1973 and 11th January, 1974, the proceedings of which were kept in a sealed cover pending decision in a vigilance case against Shri T. C. Bagoria, Assistant Engineer, is pleased to promote Shri T. C. Bagoria, Assistant Engineer, to the post of Executive Engineer in the scale of Rs. 800-50-1300/50-1600 with immediate effect.

The Governor, Himachal Pradesh is further pleased to assign him position in the merit list of Degree-holders below the name of Shri K. K. Vashisht and in the combined merit list of Degree-holders and Diploma holders after the name of Shri B. Singh.

The Governor is further pleased to post Shri T. C. Bagoria as Executive Engineer, Karsog Division, Karsog, vice Shri Diwan Chand, since transferred.

GANGESH MISRA,
Secretary.

Simla-171002, the 8th October, 1974

No. 1-49/69 P.W. 'A'-III.—Consequent upon the exoneration of Shri A. P. Dabral, Assistant Engineer (*ad hoc*) in the Departmental Inquiry pending against him, the Governor, Himachal Pradesh, on the recommendations of the H. P. Public Service Commission, contained in the sealed cover, is pleased to appoint Shri A. P. Dabral, Assistant Engineer (*ad hoc*) to the post of Assistant Engineer on officiating basis in the pay scale of Rs. 400-30-700/40-1100 with immediate effect.

2. The Governor, Himachal Pradesh is further pleased to assign seniority to Shri A. P. Dabral, Assistant Engineer in the combined seniority list between Shri Yudhishtar Raj and Shri Raj Kumar Sharma at Serial No. 149 and 150 respectively, issued vide order of even number, dated 30th September, 1974.

S. L. TALWAR,
Under Secretary.

Simla-171002, the 9th October, 1974

No. 9-13/73-PW(B).—Whereas it appears to the Governor, Himachal Pradesh that land is likely to be required to be taken by the Government at public expense for public purpose, namely C/O Link Road from National Highway No. 1-A to Railway crossing Kandrori. It is hereby notified that the land in the locality described below is likely to be required for the above purpose.

The notification is made under the provision of section 4 of the Land Acquisition Act, 1894 to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor, Himachal Pradesh is pleased to

authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Further in exercise of the power conferred by the said Act, the Governor, Himachal Pradesh is pleased to direct that action under section 17 shall be taken in this case on the ground of urgency and that the provision of section 5 (a) shall not apply in this acquisition.

SPECIFICATION

District : KANGRA

Tehsil : NURPUR

Village	Tikka	Khasra No.	Are in K. M.	Acres
SURAJPUR	JHIKLA	SURAJPUR353/1, JHIKLA354/1,	13 7 1	12
		357/1, 361/1,		
		383/1, 384/1,		
		385/1, 387/1,		
		388/1, 389/1,		
		390/1, 415/1.		

By order,
GANGESH MISRA,
Secretary.

VIDHAN SABHA SECRETARIAT NOTIFICATIONS

Simla-4, the 9th October, 1974

No. 6-15/74-VS.—The Speaker, Himachal Pradesh Legislative Assembly is pleased to promote Shri Ishwar Dass Dood, an Assistant, to officiate as Research Officer

in the scale of Rs. 350-25-500-30-590/30-830-35-900 with immediate effect, purely on temporary basis till such time the post is filled on regular basis.

This promotion will not confer on him any right or claim to regular appointment or to confirmation or for purposes of reckoning seniority. He is liable to reversion to his substantive appointment without notice.

Simla-4, the 9th October, 1974

No. 6-15/74-VS.—The Speaker, Himachal Pradesh Legislative Assembly is pleased to promote Shri Bhagmal Sehramta, an Assistant, to officiate as Private Secretary in the scale of Rs. 450-25-500/30-650/30-800 with immediate effect, purely on temporary basis till such time the post is filled on regular basis.

This promotion will not confer on him any right or claim to regular appointment or to confirmation or for purposes of reckoning seniority. He is liable to reversion to his substantive appointment without notice.

Simla-4, the 9th October, 1974

No. 6-15/74-VS.—The Speaker, Himachal Pradesh Legislative Assembly is pleased to promote Shri Nanda Lal Gupta, an Assistant, to officiate as Section Officer in the scale of Rs. 450-25-500/30-650/30-800 with immediate effect, purely on temporary basis till such time the post is filled on regular basis.

This promotion will not confer on him any right or claim to regular appointment or to confirmation or for purposes of reckoning seniority. He is liable to reversion to his substantive appointment without notice.

S. S. KANWAR,
Secretary.

भाग 2—बैधानिक नियमों को छोड़ कर विभिन्न विभागों के अध्यक्षों और जिला मैजिस्ट्रेटों द्वारा अधिसूचनाएँ इत्यादि

AGRICULTURE DEPARTMENT NOTIFICATION

Simla-5, the 28th September, 1974

No. 7-11/71-Agr-I.—In exercise of the powers vested in me vide para 2 of rule 1.26 of H. B. F.R. Vol. 4, 1971 and supplementary Rule 191, I hereby declared the Assistant Soil Conservation Officer, Mandi H. P. as Head of Office and Drawing and Disbursing Officer as well as Controlling Officer to countersign the T. A. Bills/Medical Claims etc. of Class IV staff working under them and the D. D. A. (SC) as Controlling Officer to countersign the T. A. Bills Medical claim of Class II Officers in respect of schemes of major Head "307—Soil and Water Conservation a (iii) Survey of culturable waste land Non-Plan Part I and II.

This supersedes all the previous orders and come into force with effect from the date of issue.

B. S. JOGI,
Director,

OFFICE OF THE REGISTRAR, CO-OPERATIVE SOCIETIES (PRIMARY), KINNAUR DISTRICT KALPA

ORDERS

Kalpa, the 11th October, 1974

No. Co-op. 5-444/63.—Whereas, a show cause notice was issued to the President, the Rang Phoch Simankan Co-operative Society Ltd., Phoch on 23rd September, 1974, wherein an opportunity was afforded to the management of the society to explain their position on 1st October, 1974 but the President of the said society failed to attend this office on the said date;

Whereas I find that the society has been lying dormant for a long period now and there appear to be no prospects of its revival.

Therefore, I, D. R. Shakya, Registrar, Co-operative Societies (Primary), Kinnaur district, Kalpa, in exercise of the powers conferred on me under section 78

of the Himachal Pradesh Co-operative Societies Act, 1968 (Act No. 3 of 1969) read with Co-operative Department notification No. 5-8/69-Co-op.(S)-III, dated the 4th June, 1971 do hereby order that the above named society be wound up and placed under liquidation with immediate effect.

Kalpa, the 11th October, 1974

No. Co-op. 5-444/63.—Whereas. The Rang Phoch Simankan Co-operative Society, Ltd., Pooh has been placed under liquidation.

Therefore, I, D. R. Shakya, Registrar, Co-operative Societies (Primary), Kinnaur district, Kalpa in exercise of the powers conferred on me under section 79 of the Himachal Pradesh Co-operative Societies Act, 1968 (Act No. 3 of 1969) read with Co-operative Department notification No. 5-8/69-Co-op.(S)III, dated the 4th June, 1971 do hereby appoint Shri Lok Ram Bhardwaj, Inspector Co-operative Societies, Pooh liquidator of the above named society.

The said Shri Lok Ram Bhardwaj, Inspector, Co-operative Societies shall in the performance of his duties as liquidator exercise all powers under section 80 of the Himachal Pradesh Co-operative Societies Act, 1968 (Act No. 3 of 1969).

D. R. SHAKYA,
Registrar.

PUBLIC WORKS DEPARTMENT NOTIFICATIONS

Whereas it appears to the Governor, Himachal Pradesh that the land is required to be taken by the Government at public expense for a public purpose* It is hereby declared that the land described in the specification below is required for the said* purpose.

The declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894 to all whom it may concern and under the provisions of section 7 of the said Act, the Collector, Land Acquisition, Himachal Pradesh P. W. D., is hereby directed to take order for the acquisition of the said land.

A plan of the land may be inspected in the office of the Collector Land Acquisition, Himachal Pradesh P.W.D., Kasumpti, Simla 9.

No. SE-II-R-27-4/18530-34.

Simla-3, the 27th September, 1974

***Construction of Rohru-Charagaon-Dodra Kaur Road**

SPECIFICATION

District : SIMLA Tehsil : ROHRU

Village	Khasra No.	Area	
		Big.	Bis.
	2	3	4
ROHRU	391	1	8

Simla-3, the 27th September, 1974

No. SE-II-R-54-4/1-18525-29.

***Construction of Aru-Bagpul-Sarahan Road**

1	2	3	4
District : KULU		Tehsil : NIRMAND	
SARAHAN	221/1	0	2
	294/1	0	1
	220/1	0	0
	293/1	0	1
	153/1	0	6
	203/1	0	1
	265/1	0	4
	287/1	0	1
	295/1	0	0
	11/1	0	2
	292/1	0	6
	173/1	1	1
	261/1	0	1
	147/1	0	4
	266/1	0	1
	206/1	0	4
	206/2	0	2
	288/1	0	2
	289/1	0	2
	263/1	0	3
	204/1	0	3
	175/1	0	6
	151/1	0	4
	177/1	0	6
	176/1	0	13
	152/1	0	6
	174/1	0	3
	209/1	0	10
	8/1	1	1
	7/1	0	4
	205/1	0	11
	285/1	0	2
	146/1	0	4
	208/1	0	3
	261/1	0	7
	222/1	0	6
	933/1	0	1
	941/1	0	5
	944/1	0	6
	947/1	0	8
	262/1	0	3
	268/1	0	0
	269/1	0	1
	945/1	0	10
	9/1	0	1
	123/1	0	3
	172/1	0	5
	931/1	0	1
	977/1	0	4
	935/1	0	5
	274/1	0	12
	264/1	0	5
	946/1	0	4
	940/1	0	4
Total		12	10

O. P. SABHLOK,
Superintending Engineer,
2nd Circle, H. P. P. W. D., Simla-3.

Kulu, the 25th September, 1974

No. SEVI-LA-6/G-V-20047-50.—Whereas it appears to the Governor, Himachal Pradesh that the Land is required to be taken by the Government at public expense

for a public purpose, namely for construction of Bhuntar-Manikaran Road mile 6 to 10, it is hereby declared that the Land described in the specification below is required for the above purpose.

The declaration is made under the provision of section 6 of the Land Acquisition Act, 1894 to all who it may concern and under the provision of section 7 of the said Act, the Collector, Land Acquisition, H.P. P.W.D. is hereby directed to take order for the acquisition of the said land.

A plan of the land may be inspected in the office of the Collector, Land Acquisition, Himachal Pradesh P.W.D., Mandi and Kulu districts, H.P.

SPECIFICATION

District: KULU

Tehsil: KULU

Village	Khasra No.	Area			
		Big.	Bis.	Bisw.	
CHONG,	931/1	1	0	2	0
	877/1	0	1	0	
	1020/1/1	0	1	0	
	880	0	1	0	
Total		0	5	0	

Sd/-

Superintending Engineer,
6th Circle, H.P. P.W.D. Kulu.

भाग 3—अधिनियम, विधेयक और विधेयकों पर प्रवर समिति के प्रतिवेदन, वैधानिक नियम तथा हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश हाई कोर्ट, फाइनेन्शियल कमिशनर तथा कमिशनर आफ इन्कम-टैक्स द्वारा अधिसूचित आदेश इत्यादि

INDUSTRIES DEPARTMENT

CORRIGENDUM

Simla-171002, the 7th October, 1974

No. 5-59/73-SI(Estt).—Please add the attached foot-notes 1 to 7 in Appendix "A" referred to in rules 4 & 5 of the H. P. Industries Department (Geological Wing) Class III (Technical) Service. (Recruitment Promotion and certain conditions of Service) Rules, 1973, which were notified, vide Notification of even number, dated 28-12-1973 :

1. Upper-age limit for direct recruits will not be applicable to candidates already in the service of the Government.
2. Upper-age limit is relaxable for Scheduled Castes Tribes candidates and other categories of persons to the extent permissible under the general or special orders of the H. P. Government.
3. Age and qualifications relaxable at the discretion of the Commission in the case of candidates otherwise well qualified.
4. Provisions of Col. No. 10 and 11 are to be revised by the Government in consultation with the H. P. Public Service Commission as and when the number of posts under Col. 2 are increased or decreased.
5. Age-limit for direct recruits will be reckoned from the last date fixed for receipt of applications by the Commission.
6. When the Government is of the opinion that it is necessary or expedient to do so, it may by order for reasons to be recorded in writing and in consultation with the H. P. Public Service Commission relax any of the provisions of these rules with respect to any class or category of person.
7. Selection for appointment to these posts shall be made on the basis of *viva voce* test preceded, if the Commission so considers, necessary or expedient, by a written test, the standard syllabus etc. of which shall be determined by the commission.

P. K. MATTOO,
Secretary.

LABOUR DEPARTMENT

NOTIFICATION

Simla-2, the 3rd September, 1974

No. 2-397/69-SI.—In exercise of the powers conferred by section 28 of the Maternity Benefit Act, 1961 (Central Act 53 of 1961), the Governor, Himachal Pradesh is pleased to make the following amendments in the Himachal Pradesh Maternity Benefit Rules 1973 published in extra-ordinary Rajpatra dated the 30th May 1973:—

AMENDMENTS

FORM "A": After the words MUSTER ROLL the words "CONTAINING PARTICULARS OF WOMEN EMPLOYEES" shall be added appearing below the words "(see rule 3)".

(1) Rule 4 :

The heading of rule 4 shall be substituted as "Form of notice under section 6".

(2) Form "B" :

In the proforma the word "given" appearing in line 3 shall be substituted as "give".

In paragraph 1 of Form "B" the words "any branch of" shall be deleted.

(3) Rule 5:

Clause (a) of Rule 5 shall be substituted as under:—
(a) a Medical Officer of a Government hospital or of a Government dispensary.

Form "E".

For the word "dies" appearing in the fourth line of form "E" the word "died" shall be inserted.

(4) Rule 6 :

In sub-rule (1) or rule 6 (third line) the word "women" shall be substituted by the word "woman". Similarly in sub-rule (3) of rule 6, the word "persons" shall be read as "person".

Sub-rule (7) of Rule 6 shall be substituted as under:—

(7) The wages due under section 10 shall be paid within a week of the beginning of the period of

leave referred to in that section on the production of a certificate in Form "C" from the Medical Officer of a Government Hospital or of a Government dispensary or from a registered medical practitioner.

Form "F" :

The word "employed" given in the said form shall be substituted as "employee".

The spelling of word "pragnancy" as appearing in this form shall be corrected as "pregnancy".

The artical "a" used after the word "prescribed" and before the word "sections" at the end of this form shall be deleted.

(5) Rule 7 :

The provio to rule 7 shall be substituted as under :—

"Provided that in case the creche or place where children are left by woman while on duty is not in the vicinity of the place of work a period upto 15 minutes more may be allowed for each break for the purpose of journey to and from creche of the place.

(6) Rule 8 :

In line (2) of sub-rule (4) of Rule 8 for the word "provision" the word "provisions" shall be inserted and the word "on" in line (4) shall be substituted by the word "in".

(7) Rule 10(1) Form "G" :

In line 5 of the Form "G" the words "attached hereto" shall be substituted by the words "given hereunder/given in the annexure".

Rule 10(2) :

In rule 10(2) the word "either" before the word "hand" be deleted and inserted after the word "over".

(8) Rule 11 (1) Form "H"

The word "to" between "9" and "10" in line 6 of the Form H shall be replaced by the word "and".

(9) Rule 11 (1) Form "I"

In last line of Form "I" the word "the" shall be added between the words "pay" and "aforesaid".

10) Rule 12 (2) Form "J" :

In line 4 of Form "J" the word "I" shall be replaced by the word "to" and in line 6 the "fullstop" shall be replaced by a comma (,).

11) Rule 12 (3) :

Sub rule (3) of rule 12 shall be substituted as under:

(3) When an appeal is received, the Competent Authority shall call upon the Inspector to produce before a fixed date his decision and other documents. The Competent Authority shall, if necessary, also record the statements

of the aggrieved persons and of the Inspector and seek clarification, if any is required.

(12) Rule (12) (4) :

Sub-rule (4) of rule 12 shall be substituted as under:—

(4) Taking into account the documents, the evidence produced and facts presented or ascertained, the Competent Authority shall give his decision:

(13) Rule 16 (1) :

In rule 16(1), the word "to" shall be inserted in line 4 between the word "as" and "the".

In line 3 of the said rule the word "each of the" shall be deleted, and the word "form" in line 3 shall be substituted by the word "Forms".

Rule 16 (2) :

In line 5 of rule 16(2) the words "each of" shall be deleted and in line 1 after the word "applies" "comma" (,) shall be inserted.

Rule 9 :

Rule 9 shall be substituted as under :—

9. Acts which constitute gross mis-conduct:—The following acts shall constitute gross misconduct for purposes of section 12, namely:—

- (a) wilful destruction of employer's goods or property;
- (b) assaulting any superior or co-employee at the place of work ;
- (c) criminal offence involving moral turpitude resulting in conviction in a court of law ;
- (d) theft, fraud, or dishonesty in connection with the employer's business or property ; and
- (e) wilful non-observance of safety measures of rules on the subject or wilful interference with safety devices or with fire fighting equipment.

By order,
P. K. MATTOO,
Secretary.

TRANSPORT DEPARTMENT

OFFICE ORDER

Simla-1, the 1st October, 1974

No. HO. 9-835/73-A.—Please substitute "with effect from 24-9-74" instead of "with immediate effect appearing in the last line of Para-I of this office order of even number, dated 25-9-1974.

By order,

KEHAR SINGH,
Commissioner.

भाग 4—स्थानीय स्वायत्त: शासन म्युनिसिपल बोर्ड, डिस्ट्रिक्ट बोर्ड, नोटिफाइड ग्रौर टाउन एरिया तथा पंचायत विभाग

PANCHAYATI RAJ DEPARTMENT

NOTIFICATION

Simla-4, the 7th October, 1974

19/65-Panch-II.—In continuation to this de-notification of even number dated 21-5-1974,

the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission and on the recommendations of the Departmental Promotion Committee, is pleased to order the continuance of the *ad hoc* promotion of Shri Mohan Lal Chauhan, Educational Panchayat Officer/District Audit Officer/Instructor as District Panchayat Officer, Kinnaur District, in the scale of Rs. 350-25-500-30-590/30-800 with effect

from 1-7-7974 (F. N.) upto 30-9-74, or till such date as the post is filled in on regular basis, which ever is earlier.

K. C. PANDEYA,
Secretary.

ORDER

Simla-4, the 8th October, 1974

No. 5-G35/72-Panch(C).—Whereas on the enquiry conducted by the Deputy Director of Panchayati Raj Shri Joginder Singh Pradhan, Shri Palak Ram Up-Pradhan and six Panches namely Shri Baldev, Om Parkash, Durga Singh, Rikhi Ram, Dhani Ram and Smt. Kamla Devi of Gram Panchayat Rajgaht, Sub-Tehsil Rajgarh, District Sirmur, were found guilty of misconduct in terms of section 54 of Himachal Pradesh Panchayati Raj Act, 1968, for calling meeting without giving 7 days notice, getting resolution passed for holding District Samellan which was not the function of Gram Panchayat, using the name of State Minister for Panchayat unauthorisedly, and defying the orders of Deputy Commissioner, Sirmur, who has suspended that particular resolution; and were served with a show cause

notice under rule 77 of the Himachal Pradesh Gram Panchayat Rules, 1971 as to they should not be removed from the Offices which they are holding in the Gram Panchayat Rajgarh.

And whereas the explanation rendered by Shri Joginder Singh Pradhan, Shri Palak Ram Up-Pradhan and Sarvshri Baldev, Om Parkash, Durga Singh, Rikhi Ram, Dhani Ram and Smt. Kamla Devi Panch of said Gram Panchayat Rajgarh, were considered, and found unsatisfactory.

Now, therefore in exercise of the powers vested in him under section 54 of Himachal Pradesh Panchayati Raj Act, 1968, Governor, Himachal Pradesh is pleased to order removal of the aforesaid Sarvshri Joginder Singh, Palak Ram, Baldev, Om Parkash, Durga Singh, Rikhi Ram, Dhani Ram and Smt. Kamla Devi from their respective offices in the Gram Panchayat Rajgarh, Sub-Tehsil Rajgarh, District Sirmur, with immediate effect and further direct them to handover the record and property including each store etc. of Gram Panchayat Rajgarh if any lying with them, to the secretary, Gram Panchayat, Rajgarh.

Sd/-
Under Secretary.

भाग 5—वैयक्तिक अधिसूचनाएं और विज्ञापन

शून्य

भाग 6—भारतीय राजपत्र इत्यादि में से पुनः प्रकाशन

LAW DEPARTMENT

NOTIFICATION

Simla-2, the 30th September, 1974

No. LL R-E(9) 2/74.—The following Acts recently passed by the Parliament which have already been published in the Gazette of India, Extraordinary, Part II, Section 1, are hereby republished in the Himachal Pradesh Government Rajpatra for the information of general public:—

1. The Direct Taxes (Amendment) Act, 1974 (26 of 1974).
2. The Cinematograph (Amendment) Act, 1974 (27 of 1974).

M. C. PADAM,
Under Secretary (Judicial).

(Assented to on 18th August, 1974)

THE DIRECT TAXES (AMENDMENT) ACT, 1974

ACT No 26 OF 1974

AN
ACT

Further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957, the Gift-tax Act, 1958 and the Companies (Profits) Surtax Act, 1964 and to provide for certain related matters.

BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title.*—This Act may be called the Direct Taxes (Amendment) Act, 1974.

CHAPTER II

AMENDMENT TO THE INCOME-TAX ACT, 1961

2. *Amendment of section 10.*—In section 10 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act), —

- (a) in sub-clause (viii) of clause (b), before the Explanation the following proviso shall be inserted, and shall be deemed to have been inserted, with effect from the 1st day of April, 1973, namely:—

“Provided that the Central Government may, if it considers it necessary or expedient in the public interest so to do, waive the condition specified in item (1) of this sub-clause in the case of any individual who is employed in India for designing, erection or commissioning of machinery or plant or supervising activities connected with such designing, erection or commissioning.”;

- (b) in clause (15), after item (c) of sub-clause (iv), the following items shall be inserted, and shall be deemed to have been inserted, with effect from the 1st day of April, 1973, namely:—

“(d) by the Industrial Finance Corporation of India

established by the Industrial Finance Corporation Act, 1948 (15 of 1948) or the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964) or the Industrial Credit and Investment Corporation of India [a company formed and registered under the Indian Companies Act, 1913 (8 of 1913) on any moneys borrowed by it from sources outside India, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;

(e) by any other financial institution established in India or a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act), on any moneys borrowed by it from sources outside India under a loan agreement approved by the Central Government where the moneys are borrowed either for the purpose of advancing loans to industrial undertakings in India for purchase outside India of raw materials or capital plant and machinery or for the purpose of importing any goods which the Central Government may consider necessary to import in the public interest, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of loan and its repayment;

(c) after clause (17), the following clauses shall be inserted, and shall be deemed to have been inserted, with effect from the 1st day of April, 1973, namely:—

“(17A) any payment made, whether in cash or in kind, in pursuance of awards for literary, scientific and artistic work or attainment, or for proficiency in sports and games, instituted by the Central Government or by any State Government or approved by the Central Government in this behalf:

Provided that the approval granted by the Central Government shall have effect for such assessment year or years (including an assessment year or years commencing before the date on which such approval is granted) as may be specified in the order granting the approval;

(17B) any payment made, whether in cash or in kind, as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest;”

3. *Amendment of Section 32.*—In section 32 of the Income-tax Act, with effect from the 1st day of April, 1975,—

(a) in sub-section (1), after clause (v), the following clause shall be inserted, namely:—

“(vi) in the case of a new ship or a new aircraft acquired after the 31st day of May, 1974 by

an assessee engaged in the business of operation of ships or aircraft or in the case of new machinery or plant (other than office appliances or road transport vehicles) installed after that date for the purposes of business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Ninth Schedule or in the case of new machinery or plant (other than office appliances or road transport vehicles) installed after that date in a small-scale industrial undertaking for the purposes of business of manufacture or production of any other articles or things, a sum equal to twenty per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee, in respect of the previous year in which the ship or aircraft is acquired or the machinery or plant is installed, or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year; but any such sum shall not be deductible in determining the written down value for the purposes of clause (ii):

Provided that the assessee may, before the expiry of the time allowed under sub-section (1) or sub-section (2) of section 139, whether fixed originally or on extension, for furnishing the return of income for the assessment year in respect of which he first becomes entitled to deduction under this clause, furnish to the Income-tax Officer a declaration in writing that the provisions of this clause shall not apply to him, and if he does so, the provisions of this clause shall not apply to him for that assessment year and for every subsequent assessment year; so, however, that the assessee may, by notice in writing furnished to the Income-tax Officer before the expiry of the time allowed under sub-section (1) or sub-section (2) of section 139, whether fixed originally or on extension, for furnishing the return of income for any such subsequent assessment year, revoke his declaration and upon such revocation, the provisions of this clause shall apply to the assessee for that subsequent assessment year and for every assessment year thereafter:

Provided further that no deduction shall be allowed under this clause in respect of—

- (a) any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of a guest house, and
- (b) any ship, aircraft, machinery or plant in respect of which the deduction by way of development rebate is allowable under section 33.

Explanation.—For the purposes of this clause,—

- (1) “new ship” or “new aircraft” includes a ship or aircraft which before the date of acquisition by the assessee was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India;
- (2) “new machinery or plant” includes machinery or plant which before its installation by the assessee

was used outside India by any other person, if the following conditions are fulfilled, namely:—

- (a) such machinery or plant was not, at any time previous to the date of such installation by the assessee, used in India;
 - (b) such machinery or plant is imported into India from any country outside India; and
 - (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of the Indian Income-tax Act, 1922 (11 of 1922) or this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee;
- (3) an industrial undertaking shall be deemed to be a small-scale industrial undertaking if the aggregate value of the machinery and plant installed, as on the last day of the previous year, for the purposes of the business of the undertaking does not exceed seven hundred and fifty thousand rupees; and for this purpose the value of any machinery or plant shall be,—
- (a) in the case of any machinery or plant owned by the assessee, the actual cost thereof to the assessee; and
 - (b) in the case of any machinery or plant owned hired by the assessee, the actual cost thereof as in the case of the owner of such machinery or plant;

(b) in sub-section (2), after the words, brackets and figure "or clause (v)", the words, brackets and figures "or clause (vi)" shall be inserted.

4. *Amendment of section 34.*—In section 34 of the Income-tax Act, in clause (ii) of sub-section (2), after the words, brackets and figures "or clause (iv)" the words, brackets and figures "or clause (v) or clause (vi)" shall be inserted with effect from the 1st day of April, 1975.

5. *Amendment of section 35.*—In section 35 of the Income-tax Act,—

- (a) in clause (i) of sub-section (1), the following *Explanation* shall be inserted, and shall be deemed to have been inserted, with effect from the 1st day of April, 1974, at the end, namely:—

"*Explanation.*—Where any such expenditure has been laid out or expended before the commencement of the business (not being expenditure laid out or expended before the 1st day of April, 1973) on payment of any salary [as defined in Explanation 2 below sub-section (5) of section 40A] to an employee engaged in such scientific research or on the purchase of materials used in such scientific research, the aggregate of the expenditure so laid out or expended within the three years immediately preceding the commencement of the business shall, to the extent it is certified by the prescribed authority to have been laid out or expended on such scientific research, be deemed to have been laid out or expended in the previous year in which the business is commenced;"

- (b) in clause (iv) of sub-section (2), for the word, brackets and figures "and (iii)", the brackets, figures and word, (iii) and (vi)" shall be substituted with effect from the 1st day of April, 1975;

- (c) after sub-section (2), the following sub-section shall be inserted, and shall be deemed to have been inserted, with effect from the 1st day of April, 1974, namely:—

(2A) Where the assessee pays any sum to a scientific research association or university of college or other institution referred to in clause (ii) of sub-section (1) to be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority having regard to the social, economic and industrial needs of India, then,—

- (a) there shall be allowed a deduction of a sum equal to one and one-third times the sum so paid; and
- (b) no deduction in respect of such sum shall be allowed under clause (ii) of sub-section (1) for the same or any other assessment year."

6. *Amendment of section 35B.*—In section 35 B of the Income-tax Act, in clause (a) of sub-section (1), the following proviso shall be inserted, and shall be deemed to have been inserted, with effect from the 1st day of April, 1973, at the end, namely:—

"Provided that in respect of the expenditure incurred after the 28th day of February, 1973 by a domestic company, being a company in which the public are substantially interested, the provisions of this clause shall have effect as if for the words "one and one-third times", the words "one and one-half times" had been substituted".

7. *Amendment of section 40A.*—In section 40A of the Income-tax Act, in sub-section (5), in sub-clause (i) of clause (c), the following proviso shall be inserted, and shall be deemed to have been inserted, with effect from the 1st day of April, 1974, at the end, namely:—

"Provided that where the expenditure is incurred on payment of any salary to an employee or a former employee engaged in scientific research during any one or more of the three years immediately preceding the commencement of the business and such expenditure is deemed under the *Explanation* to clause (i) of sub-section (1) of section 35 to have been laid out or expended in the previous year in which the business is commenced, the limit referred to in this sub-clause shall, in relation to the previous year in which the business is commenced, be an amount calculated at the rate of five thousand rupees for each month or part thereof comprised in the period of his employment in India during the previous year in which such business is commenced and in the period of his employment in India during which he was engaged in scientific research during the three years immediately preceding that previous year;"

8. *Amendment of section 80A.*—In section 80A of the Income-tax Act, in sub-section (3) for the word, figures and letter "section 80H", the words, figures and letters "section 80H or section 80 HH" shall be substituted.

tuted, and shall be deemed to have been substituted, with effect from the 1st day of April, 1974.

9. *Insertion of new section 80HH.*—In the Income-tax Act, after section 80H, the following section shall be inserted, and shall be deemed to have been inserted, with effect from the 1st day of April, 1974, namely:—

80HH. *Deduction in respect of profits and gains from newly established Industrial undertakings or hotel business in backward areas.*—(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:—

- (a) it has begun or begins to manufacture or produce articles after the 31st day of December, 1970 in any backward area;
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence in any backward area;

Provided that this condition shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

- (iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose in any backward area;
- (iv) it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

Explanation.—Where any machinery or plant or any part thereof previously used for any purpose in any backward area is transferred to a new business in that area or in any other backward area and the total value of the machinery or plant so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (iii) of this sub-section, the condition specified therein shall be deemed to have been fulfilled.

(3) This section applies to the business of any hotel, where all the following conditions are fulfilled, namely:—

- (i) the business of the hotel has started or starts functioning after the 31st day of December, 1970 in any backward area;
- (ii) the business of the hotel is not formed by the splitting up, or the reconstruction, of a business already in existence;
- (iii) the hotel is for the time being approved for the purposes of this sub-section by the Central Government.

(4) The deduction specified in sub-section (1) shall be

allowed in computing the total income in respect of each of the ten assessment years beginning with the assessment year relevant to the previous year in which the Industrial undertaking begins to manufacture or produce articles or the business of the hotel starts functioning:

Provided that,—

- (i) in the case of an industrial undertaking which has been begun to manufacture or produce articles, and
 - (ii) in the case of the business of a hotel which has started functioning,
- after the 31st day of December, 1970 but before the 1st day of April, 1973, this sub-section shall have effect as if the reference to ten assessment years were a reference to ten assessment years as reduced by the number of assessment years which expired before the 1st day of April, 1974.

(5) Where the assessee is a person other than a company or a co-operative society, the deduction under sub-section (1) shall not be admissible unless the accounts of the industrial undertaking or the business of the hotel for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant.

(6) Where any goods held for the purpose of the business of the industrial undertaking or the hotel are transferred to any other business carried on by the assessee, or where any goods held for the purpose of any other business carried on by the assessee are transferred to the business of the industrial undertaking or the hotel and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the business of the industrial undertaking or the hotel does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of the industrial undertaking or the business of the hotel shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date:

Provided that where, in the opinion of the Income-tax Officer the computation of the profits and gains of the industrial undertaking or the business of the hotel in the manner hereinbefore specified presents exceptional difficulties, the Income-tax Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation.—In this sub-section, “market value” in relation to any goods means the price that such goods would ordinarily fetch on sale in the open market.

(7) Where it appears to the Income-tax Officer that owing to the close connection between the assessee carrying on the business of the industrial undertaking or the hotel to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in the business of the industrial undertaking or the hotel, the Income-tax Officer shall, in computing the profits and gains of the industrial undertaking or the hotel for the

purposes of the deduction under this section, take the amount of profits be as may be reasonably deemed to have been derived therefrom.

(8) In a case where the assessee is entitled also to the deduction under section 80H in relation to the profits and gains of an industrial undertaking to which this section applies, the deduction under sub-section (1) shall be allowed with reference to the amount of such profits and gains as reduced by the deduction under section 80H in relation to such profits and gains.

(9) in a case where the assessee is entitled also to the deduction under section 80J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which this section applies, effect shall first be given to the provisions of this section.

(10) Nothing contained in this section shall apply in relation to any undertaking engaged in mining.

Explanation.—In this section, “backward area” means an area specified in the list in the Eighth Schedule.

10. Amendment of section 80J.—In section 80J of the Income-tax Act,—

- (a) in sub-section (1), for the brackets, words, figures and letter “(reduced by the deduction, if any, admissible to the assessee under section 80H)”, the brackets, words, figures and letters “(reduced by the aggregate of the deductions, if any, admissible to the assessee under section 80H and section 80HH)” shall be substituted, and shall be deemed to have been substituted, with effect from the 1st day of April, 1974;
- (b) in sub-section (3), for the word, figures and letter “section 80H”, the words, figures and letters “section 80H, section 80HH” shall be substituted, and shall be deemed to have been substituted, with effect from the 1st day of April, 1974.

11. Amendment of section 80P.—In section 80P of the Income-tax Act, in sub-section (3),—

- (a) for the words, figures and letters “section 80H or section 80J”, the words, figures and letters “section 80H or section 80HH or section 80J” shall be substituted, and shall be deemed to have been substituted, with effect from the 1st day of April, 1974;
- (b) for the words, figures and letters “section 80H and section 80J”, the words, figures and letters “section 80H, section 80HH and section 80J” shall be substituted, and shall be deemed to have been substituted, with effect from the 1st day of April, 1974.

12. Amendment of section 80QQ.—In section 80QQ of the Income-tax Act, in sub-section (2),—

- (a) for the words, figures and letters “section 80H or section 80J”, the words, figures and letters “section 80H or section 80HH or section 80J” shall be substituted, and shall be deemed to have been substituted, with effect from the 1st day of April, 1974;
- (b) for the words, figures and letters “sections 80H, 80J and 80P”, the words, figures and letters “section 80H, section 80HH, section 80J and section 80P” shall be substituted, and shall be deemed to have been substituted, with effect from the 1st day of April, 1974.

13. Amendment of section 271.—In section 271 of the Income-tax Act, for clause (i) of sub-section (1), the following clause shall be substituted and shall be deemed always to have been substituted, namely:—

- (i) in the cases referred to in clause (a), in addition to the amount of the tax, if any, payable by him, a sum equal to two per cent of the assessed tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent of the assessed tax.

Explanation.—In this clause, “assessed tax” means tax as reduced by the sum, if any, deducted at source under Chapter XVII-B or paid in advance under Chapter XVII-C.

14. Amendment of section 295.—In section 295 of the Income-tax Act, after sub-section (3), the following sub-section shall be inserted, namely:—

- “(4) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them and, unless the contrary is permitted (whether expressly or by necessary implication), no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assesseees.”

15. Insertion of Eighth Schedule.—In the Income-tax Act, after the Seventh Schedule, the following Schedule shall be inserted, and shall be deemed to have been inserted with effect from the 1st day of April, 1974, namely:—

“THE EIGHTH SCHEDULE

(See section 80HH)

List of backward areas

Name of State or Union territory	Backward areas
Andhra Pradesh	The districts of Anantpur, Chittoor, Cuddapah, Karimnagar, Khammam, Kurnool, Mahabubnagar, Medak, Nalgonda, Nellore, Nizamabad, Ongole, Srikakulam and Warangal.
Assam	The districts of Cachar, Goalpara, Kamrup, Lakhimpur, Nihit Hills, North Cachar Hills and Nowgong.
Bihar	The districts of Bhagalpur, Darbhanga, East Champaran, Madhubani, Muzaffarpur, Palamau, Purnea, Saharsa, Samastipur, Santal Parganas, Saran, Sitamarhi, Siwan, Vaishali and West Champaran.
Gujarat	The districts of Amreli, Banas Kantha, Bharuch, Bhavnagar, Junagadh, Kutch, Mahesana, Panch Mahals, Sebar Kantha and Surendranagar.
Haryana	The districts of Bhiwani, Hisar, Jind and Mahendragarh.
Himachal Pradesh	The districts of Chamba, Hamirpur, Kangra, Kinnaur, Kulu, Lahaul and Spiti, Sirmur, Solan and Una.
Jammu and Kashmir	The districts of Anantnag, Baramulla, Doda, Jammu, Kathua, Ladakh, Punch, Rajauri, Srinagar and Udhampur.
Karnataka	The districts of Belgaum, Bidar, Bijapur, Dharwar, Gulbarga, Hassan, Mysore, North Kanara, Raichur, South Kanara and Tumkur.

Name of State or Union Territory	Backward areas	Name of State or Union Territory	Backward areas
Kerala	The districts of Alleppey, Cannanore, Malappuram, Trichur and Trivandrum.	West Bengal	The districts of Bankura, Birbhum, Burdwan, Cooch Behar, Darjeeling, Hooghly, Jalpaiguri, Malda, Midnapore, Murshidabad, Nadia, Purulia and West Dinajpur.
Madhya Pradesh	The district of Balaghat, Bastar, Betul, Bilaspur, Bhind, Chhatarpur, Chhindwara, Damoh, Datia, Dewas, Dhar, Guna, Hoshangabad, Jabua, Khargone, Mandhla, Mandsaur, Morena, Narsimhapur, Panna, Raigarh, Raipur, Raisen, Rajgarh, Rajnandgaon, Ratlam, Rewa, Sagar, Sehore, Seoni, Shajapur, Shivpuri, Sidhi, Surguja, Tikamgarh and Vidisha.	Andaman and Nicobar Islands.	The whole of the Union Territory.
		Arunachal Pradesh	The whole of the Union Territory.
		Dadra and Nagar Haveli.	The whole of the Union Territory.
		Goa, Daman and Diu.	The whole of the Union Territory.
		Lakshadweep	The whole of the Union Territory.
		Mizoram	The whole of the Union Territory.
		Pondicherry	The whole of the Union Territory.
Maharashtra	The districts of Aurangabad, Bhandara, Bhir, Buldhana, Chandrapur, Dhulia and Jalgaon; the district of Kolaba excluding such portion thereof as is comprised in the area designated as the site for the proposed new town of New Bombay by notification No. RPB 1171-18124-I.W., dated the 20th March, 1971, issued under subsection (1) of section 113 of the Maharashtra Regional and Town Planning Act, 1966 (Maharashtra Act 37 of 1966) by the Government of Maharashtra (Under Development, Public Health and Housing Department) as amended by notification No. RPB 1173-I-RPC, dated the 16th August, 1973, issued by that Government; the districts of Nanded, Osmanabad, Parbhani, Ratnagiri and Yeotmal.		

Manipur

The whole of the State.

Meghalaya

The districts of Garo Hills, Jaintia Hills and Khasi Hills.

Nagaland

The whole of the State.

Orissa

The districts of Balasore, Bolangir, Dhenkanal, Kalahandi, Keonjhar, Koraput, Mayurbhanj and Phulbani.

Punjab

The district of Bhatinda; so much of the district of Faridkot as formed part of the district of Bhatinda on the 31st day of July, 1972; the districts of Gurdaspur, Hoshiarpur and Sangrur.

Rajasthan

The districts of Alwar, Banswara, Barmer, Bhilwara, Churu, Dungarpur, Jaisalmer, Jalor, Jhalawar, Jhunjhunun, Jodhpur, Nagaur, Sikar, Sirohi, Tonk and Udaipur.

Tamil Nadu.

The districts of Dharmapuri, Kanyakumari, Madurai, North Arcot, Ramanathapuram, South Arcot, Thanjavur and Tiruchirappalli.

Tripura

The whole of the State.

Uttar Pradesh

The districts of Almora, Azamgarh, Baharaich, Ballia, Banda, Bara, Banki, Basti, Budaun, Bullandshahr, Chamoli, Deoria, Etah, Etawah, Faizabad, Farrukhabad, Fatehpur, Garhwal, Ghazipur, Gonda, Hamirpur, Hardoi, Jalaun, Jaunpur, Jhansi, Mainpuri, Mathura, Moradabad, Pilibhit, Pithoragarh, Partapur, Rae Bareilly, Shahjahanpur, Sitapur, Sultanpur, Tehri-Garhwal, Unnao and Uttarkashi.

Explanation.—Save as otherwise expressly provided, reference to any district in this Schedule shall be construed as a reference to the areas comprised in that district on the 3rd day of September, 1973 being the date of introduction of the Direct Taxes (Amendment) Bill, 1973 in the House of the People."

16. Insertion of Ninth Schedule.—In the Income-tax Act, the following Schedule shall be inserted at the end with effect from the 1st day of April, 1975, namely:—

"THE NINTH SCHEDULE

[See section 32 (1) (vi)]

List of articles or things

1. Iron and steel (metal).
2. Non-ferrous metals.
3. Ferro-alloys and special steels.
4. Steel castings and forgings and malleable iron and steel castings.
5. Thermal and hydro power generation equipment.
6. Transformers and switch gears.
7. Electric motors.
8. Industrial and agricultural machinery.
9. Earth moving machinery.
10. Machine tools.
11. Fertilisers, namely, ammonium sulphate, ammonium sulphate nitrate (double salt) ammonium nitrate, calcium ammonium nitrate (nitrolime stone), ammonium chloride, super phosphate, urea and complex fertilisers of synthetic origin containing both nitrogen and phosphorus, such as ammonium phosphates, ammonium sulphate phosphate and ammonium nitro phosphate.
12. Soda ash.
13. Caustic soda.
14. Commercial vehicles.
15. Ships.
16. Aircraft.
17. Tyres and tubes.
18. Paper, pulp and newsprint.
19. Sugar.
20. Vegetable oils.
21. Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope.
22. Textile (including those dyed, printed or otherwise processed) made wholly or mainly of jute, including jute twine and jute rope.
23. Cement and refractories."

CHAPTER III

AMENDMENT TO THE WEALTH-TAX ACT, 1957

17. *Amendment of section 46.*—In section 47 of the Wealth-tax Act, 1957 (27 of 1957) (hereinafter referred to as the Wealth-tax Act), for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them and, unless the contrary is permitted (whether expressly or by necessary implication), no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assesseees.”

CHAPTER IV

AMENDMENTS TO THE GIFT-TAX ACT, 1958

18. *Amendment of section 17.*—In section 17 of the Gift-tax Act, 1958 (18 of 1958) (hereinafter referred to as the Gift-tax Act), for clause (i) of sub-section (1), the following clause shall be substituted, and shall be deemed to have been substituted, with effect from the 1st day of April, 1963, namely:—

“(i) in the cases referred to in clause (a), in addition to the amount of the gift-tax, if any, payable by him, a sum equal to two per cent of the assessed tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent of the assessed tax.

Explanation.—In this clause, “assessed tax” means the gift-tax chargeable under the provisions of this Act as reduced by the amount, if any, for which credit is allowed under section 18;”

19. *Amendment of section 46.*—In section 46 of the Gift-tax Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them and, unless the contrary is permitted (whether expressly or by necessary implication), no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assesseees.”

CHAPTER V

AMENDMENTS TO THE COMPANIES (PROFITS) SURTAX ACT, 1964

20. *Amendment of section 9.*—In section 9 of the Companies (Profits) Surtax Act, 1964 (7 of 1964) [hereinafter referred to as the Companies (Profits) Surtax Act], in clause (a), for the words “surtax payable”, the words “surtax chargeable under the provisions of this Act” shall be substituted and shall be deemed always to have been substituted.

21. *Amendment of section 25.*—In section 25 of the Companies (Profits) Surtax Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them and, unless the contrary is permitted (whether expressly or by necessary implication), no retros-

pective effect shall be given to any rule so as to prejudicially affect the interests of assesseees.”

CHAPTER VI

MISCELLANEOUS

22. *Section 13 not to apply in certain cases.*—Where, in the case of an assessee, the Supreme Court has, before the date of introduction of the Direct Taxes (Amendment) Bill, 1973 in the House of the People, held, on an appeal in respect of an order imposing a penalty under clause (i) of sub-section (1) of section 271 of the Income-tax Act for any particular assessment year, that the expression “the amount of the tax, if not payable by him” in the said clause shall be construed as the amount of the tax payable by him under the notice of demand under section 156 of that Act issued in pursuance of an order of assessment, nothing contained in section 13 of this Act shall apply or be deemed to have ever applied in relation to the order of penalty in the case of such assessee for that particular year.

23. *Special provision as to effect of section 18 (1) (i) of Wealth tax Act, as it stood during certain period.*— Clause (i) of sub-section (1) of section 18 of the Wealth-tax Act, as it stood during the period commencing on the 1st day of April, 1965 and ending with the 31st day of March, 1969, shall have and be deemed always to have effect as if the words “the tax” occurring therein, at both the places, means the wealth-tax chargeable under the provisions of that Act.

24. *Special provision as to effect of section 17 (1) (i) of Gift-tax Act, as it stood during certain period.*— Clause (i) of sub-section (1) of section 17 of the Gift-tax Act, as it stood before the 1st day of April, 1963, shall have and be deemed always to have effect as if the words “such tax” occurring therein mean the gift-tax chargeable under the provisions of that Act as reduced by the amount, if any, for which credit is allowed under section 18 of that Act.

Assented to on 23-8-1974.

THE CINÉMATOGRAPH (AMENDMENT) ACT, 1974

ACT No. 27 OF 1974

AN
ACT

further to amend the Cinematograph Act, 1952

BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Cinematograph (Amendment) Act, 1974.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Amendment of section 2.*—In the Cinematograph Act, 1952 (37 of 1952) (hereinafter referred to as the principal Act), in section 2,—

(a) after clause (a), the following clause shall be inserted, namely:—

“(aa) “appellate Tribunal” means an Appellate Tribunal constituted under sub-section (2) of section 5D;”

(b) after clause (d), the following clauses shall be inserted, namely:—

(da) "Examining Committee", in relation to a film, means the Examining Committee constituted by special order under section 3B for that film or, as the case may be, the Examining Committee constituted under that section by general order for films of the class to which such film belongs;

(db) "export" means taking out of India to a place outside India;

(c) clause (dd) shall be re-lettered as clause (dc);

(f) after clause (f), the following clause shall be inserted, namely:—

(e) "Revising Committee", in relation to a film, means the Revising Committee constituted by special order under section 3B for that film or, as the case may be, the Revising Committee constituted under that section by general order for films of the class to which such film belongs.

3. *Amendment of section 3.*—In section 3 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "not more than nine other members" the words "five other whole-time members and six honorary members" shall be substituted;

(ii) the following proviso shall be inserted at the end, namely:—

"Provided that three of the honorary members shall be persons engaged or employed in the film industry."

(b) in sub-section (2), for the words "shall receive such salary and allowances as may be determined by the Central Government, and the other members", the words "and the other whole-time members shall receive such salaries and allowances as may be determined by the Central Government and the honorary members" shall be substituted.

4. *Insertion of new sections 3A and 3B.*—After section 3 of the principal Act, the following sections shall be inserted, namely:—

"3A. *Assessors and Regional Officers.*—(1) For the purpose of enabling the Board to efficiently discharge its functions, and for the examination of films in different languages, under this Act, the Central Government may appoint as many assessors as it thinks fit for such regional centres as may be determined by that Government:

Provided that not more than seven assessors shall be appointed in relation to films in any particular language.

(2) The assessors shall discharge such functions, as are assigned to them by or under this Act and it shall be the duty of every assessor to render such assistance to the Board on any matter in respect of the examination of any film as may be required by the Board.

(3) The assessors shall not be entitled to any salary, but shall receive such fees or allowances as may be prescribed.

(4) At each regional centre, there shall be as many regional officers as the Central Government may think fit to appoint and rules made in this behalf may provide for the association of regional officers in the examination of films.

3B. *Examining Committees and Revising Committees.*—(1) The Board may by special or general order, constitute—

(a) an Examining Committee for the examination under this Act of any film or class of films; and

(b) a Revising Committee, for reconsidering, where it is necessary so to do under this Act, the recommendations of any Examining Committee, for or in relation to any film or any class of films.

(2) Every Examining Committee shall consist of one whole-time member of the Board and two assessors, and the whole-time member shall be the Chairman of the Committee.

(3) Every Revising Committee shall consist of—

(a) the Chairman one whole-time member, and one honorary member, of the Board; or

(b) two whole-time members, and one honorary member, of the Board,

and the Chairman of the Board or, if he is not a member of the Committee, one of the whole-time members nominated by him, shall be the Chairman of the Committee."

5. *Amendment of section 4.*—In section 4 of the principal Act,—

(a) in sub-section (1), for the words "after examining or having the film examined in the prescribed manner", the words "after the examination of the film as provided in this Act and the rules made thereunder" shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Any person, desiring to export any film for exhibition outside India, shall, in the prescribed manner, make an application to the Board for a certificate in respect thereof and the Board may, after the examination of the film as provided in this Act and the rules made thereunder,—

(i) sanction the film as a film fit for exhibition outside India; or

(ii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary, before sanctioning the film as a film fit for exhibition outside India; or

(iii) refuse to sanction the film as a film fit for exhibition outside India."

(c) in sub-section (2), after the word, brackets and figure "sub-section (1)", the words, brackets, figures and letter "or under clause (ii) or clause (iii) of sub-section (1A)" shall be inserted.

6. *Insertion of new section, 4A.*—After section 4 of the principal Act, the following section shall be inserted, namely:—

"4A. *Examination of films by Examining Committees.*—(1) Every film in respect of which an application is made under section 4 shall be examined in the prescribed manner by the Examining Committee.

(2) The Examining Committee shall examine the film having regard to the principles for guidance in certifying films specified in or under section 5B and make such recommendations to the Board as it deems appropriate:

Provided that if there is a difference of opinion amongst the members of the Committee each member shall

record separately his recommendations and the reasons therefor.

- (3) The recommendations of the Examining Committee or, as the case may be, the recommendations of each of the members of the Committee, shall be communicated in the prescribed manner to the Board and the Board shall, after making such further examination of the film as it may deem necessary, pass such orders on the application as it deems fit under section 4 and 5A:

Provided that before passing such orders the Board shall refer the film for further examination to the Revising Committee—

- (a) in a case where there is a difference of opinion between the Chairman of the Examining Committee and the other members thereof in respect of all or any of the recommendations;
- (b) in any other case, if the applicant represents, when he is given an opportunity for representing his views under sub-section (2) of section 4, that the film shall be so referred.”

7. *Substitution of new section for section 5.*—For section 5 of the principal Act, the following section shall be substituted, namely:—

“5. *Further examination by Revising Committee.*—(1) Where any film is referred to a Revising Committee under sub-section (3) of section 4A, the Revising Committee shall examine the film in the prescribed manner having regard to the principles for guidance in certifying films specified in or under section 5B and make its recommendations to the Board:

Provided that if there is a difference of opinion amongst the members of the Committee each member shall record separately his recommendations and the reasons therefor.

- (2) The recommendations of the Revising Committee or, as the case may be, the recommendations of each of the members of the Committee shall be communicated in the prescribed manner to the Board and the Board may pass such orders on the application as it deems fit under sections 4 and 5A.”

8. *Amendment of section 5A.*—In section 5A of the principal Act,—

- (a) in sub-section (1), for the words “If, after examining a film or having it examined in the manner provided in this Act,” the words, brackets and figures “If, after the examination, as provided in this Act and the rules made thereunder, of a film in respect of which an application under sub-section (1) of section 4 have been made,” shall be substituted;

- (b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) If, after the examination, as provided in this Act and the rules made thereunder, of a film in respect of which an application under sub-section (1A) of section 4 has been made, the Board considers that the film is a film fit for exhibition outside India, it shall grant to the person applying for a certificate in respect of the film, a certificate to that effect and shall cause the film to be so marked in the prescribed manner.”;

- (c) in sub-section (3), for the words “under this section shall be valid throughout India for a period of ten years”, the words, brackets, figures and letter

“under sub-section (1) shall be valid throughout India for a period of ten years and a certificate granted by the Board under sub-section (1A) in respect of a film shall be valid for purposes of export of the film for such period as may be prescribed” shall be substituted.

9. *Amendment of section 5B.*—In section 5B of the principal Act,—

- (a) in sub-section (1),—

(i) for the words “certified for public exhibition”, the words “certified under this Act” shall be substituted;

(ii) after the words “against the interest of”, the words “the sovereignty and integrity of India”, shall be inserted;

- (b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) In particular and without prejudice to the generality of the provisions of sub-section (1), a film shall not be certified as a film fit for exhibition outside India if, in the opinion of the authority competent to grant the certificate, the film or any part of it presents or is likely to present an erroneous, distorted or misleading image of the social, cultural or political institutions of India or any part thereof.”;

- (c) in sub-section (2),—

(i) for the word, brackets and figure “sub-section (1)”, the words, brackets, figures and letter “sub-section (1) and sub-section (1A)” shall be substituted;

(ii) after the words “public exhibition” the words “or, as the case may be, exhibition outside India” shall be inserted.

10. *Substitution of new sections for section 5C.*—For section 5C of the principal Act, the following sections shall be substituted, namely:—

“5C. *Appellate Tribunals.*—(1) The Central Government shall, by notification in the Official Gazette, nominate twelve persons to serve, as hereinafter provided, as members of Appellate Tribunals.

- (2) Such nomination shall be made from persons—

(i) who are familiar with the social, cultural or political institutions of India, or

(ii) who have special knowledge of the various regions of India, or

(iii) who have special knowledge of films and their impact on society; or

(iv) who have, for at least ten years, held civil judicial posts or who have been in practice as advocates for at least ten years or who have been members of the Central Legal Service (not below Grade III) for at least three years.

Explanation.—For the purpose of this sub-section, in computing the period during which a person had been an advocate of a High Court, there shall be included any period during which the person has held judicial office after he became an advocate.

- (3) Every Appellate Tribunal shall consist of three members appointed by the Central Government from among the persons nominated by it under sub-section (1).

- (4) The Central Government shall, by notification in the Official Gazette, designate any officer of Government to function as the Registrar of Appellate Tribunals.

- (5) The terms and conditions of service of the members of, and the procedure to be followed by, the Appellate Tribunals shall be such as may be prescribed.

5D. *Appeals.*—(1) Any person who applies for a certificate in respect of a film and who is aggrieved by an order of the Board—

- (a) refusing to grant the certificate, or
- (b) granting only an "A" certificate, or
- (c) directing the applicant to carry out any excisions or modifications,

may, within thirty days from the date of such order, lodge an appeal with the Registrar of Appellate Tribunals appointed under sub-section (4) of section 5C.

- (2) The Central Government shall, as soon as may be upon receipt of information of the lodging of any appeal, constitute an Appellate Tribunal as specified in sub-section (3) of section 5C.

- (3) The Appellate Tribunal shall, after such inquiry into the matter as it considers necessary, and after giving the appellant an opportunity for representing his views in the matter, make such order in relation thereto as it thinks fit and the Board shall dispose of the matter in conformity with such order.

11. *Amendment of section 6.*—In section 6 of the principal Act,—

- (a) in sub-section (1), for the words "pending before, or has been decided by, the Board," the words and brackets "pending before the Examining Committee or the Revising Committee or the Board, or has been decided by the Board (but not including any proceeding in respect of any matter which is pending before or has been decided by an Appellate Tribunal)," shall be substituted;

- (b) in sub-section (2),—

- (i) for the words "by notification", the words "by order published" shall be substituted;
- (ii) in clause (a), after the words "any part of India", the words "or, as the case may be, an uncertified film for exhibition outside India, whether generally or in any particular country or countries outside India" shall be inserted;
- (iii) in clause (c), after the words "the exhibition", the words "or, as the case may be, export for exhibition" shall be inserted;

- (c) after sub-section (4), the following sub-sections shall be inserted, namely:—

"(5) The Central Government may, if satisfied in relation to any film in respect of which an order has been made by an Appellate Tribunal under section 5D that it is necessary so to do in the interests of—

- (i) the sovereignty and integrity of India; or
- (ii) the security of the State; or
- (iii) friendly relations with foreign States; or
- (iv) public order or decency or morality,

make such inquiry into the matter as it considers necessary, and pass such order in relation thereto as it thinks fit, and the Board shall thereupon dispose of the matter in conformity with such order:

Provided that no such order shall be made prejudicially affecting any person to whom a certificate has been granted except after giving him an opportunity for representing his views in the matter:

Provided further that nothing in this sub-section shall require the Central Government to disclose any

fact which it considers to be against public interest to disclose.

- (6) The provisions of sub-section (2) to (4) of this section shall, so far as may be, apply also in relation to every film in respect of which the Central Government may exercise powers under sub-section (5)."

12. *Amendment of section 6A.*—In section 6A of the principal Act, for the words "distributor or exhibitor", at both the places where they occur, the words "distributor, exhibitor or exporter" shall be substituted.

13. *Amendment of section 7.*—In section 7 of the principal Act, in sub-section (1), after clause (a), the following clause shall be inserted, namely:—

"(aa) exports or attempts to export any film which is not certified by the Board as a film fit for exhibition outside India, or".

14. *Amendment of section 7A.*—In section 7A of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Where any film which is not certified by the Board as a film fit for exhibition outside India is attempted to be exported, any police officer may, in pursuance of an order made in this behalf by the District Magistrate or any Magistrate of the First Class empowered in this behalf by the District Magistrate, enter any place in which he has reason to believe that the film is kept, search it and seize the film."

15. *Amendment of section 7C.*—In section 7C of the principal Act,—

- (i) after the word "Board", the words "or an Appellate Tribunal" shall be inserted;
- (ii) for the word "person", the words "person or authority" shall be substituted.

16. *Amendment of section 7D.*—In section 7D of the principal Act, the words "or of any advisory panel" and the words "or panel, as the case may be" shall be omitted.

17. *Amendment of section 7E.*—In section 7E of the principal Act, for the words "and of any advisory panel", the words "and of every Appellate Tribunal and all assessors" shall be substituted.

18. *Amendment of section 7F.*—In section 7F of the principal Act, for the words "advisory panel or any officer or member of the Central Government, Board or advisory panel, as the case may be," the words "any Examining Committee, any Revising Committee, any Appellate Tribunal or the Registrar of Appellate Tribunals or any other officer of the Central Government or any member of the Board or of any Appellate Tribunal or an assessor," shall be substituted.

19. *Amendment of section 8.*—In section 8 of the principal Act, in sub-section (2),—

- (a) in clause (a), after the words "the number of persons who may constitute the Board", the words "the terms and conditions of service (other than salary and allowances) of the Chairman and other whole-time members of the Board, the allowances or fees and other terms and conditions of service of the honorary members of the Board" shall be inserted;
- (b) after clause (a), the following clauses shall be inserted, namely:—

- “(aa) the functions of, the fees or allowances payable to, and the other terms and conditions of service of, assessors;
- (ab) the procedure of Examining Committees and Revising Committees for examining films and making recommendations to the Board and all matters ancillary thereto;
- (ac) the terms and conditions of service of persons appointed as members of any Appellate Tribunal;”;
- (c) in clause (b), the words “as suitable for public exhibition” shall be omitted;
- (d) in clause (e), for the words “may be preferred”, the words “may be lodged and the procedure which may be followed for the disposal of appeals” shall be substituted;
- (e) after clause (e), the following clause shall be inserted, namely:—
“(ea) the time within which any act or thing (including the examination of any film and the disposal of any proceedings) shall ordinarily be done under this Act, by the Board, or Examining Committees or Revising Committees or the Central Government or Appellate Tribunal or other officers or authorities under this Act;”.

20. *Amendment of section 9.*—In section 9 of the principal Act, for the words “exhibition of any film”, the words “exhibition or export of any film” shall be substituted.

21. *Special provision as to pending cases.*—(1) The provisions of the principal Act, as amended by this Act (the principal Act as so amended being hereafter in this section referred to as the amended Act), shall apply in relation to applications in respect of films made to the Board under sub-section (1) of section 4 of the principal Act and pending immediately before the commencement of this Act, subject to the following provisions, namely:—

- (a) The Board may take action under clause (i), clause (ii), clause (iii), or, as the case may be, clause (iv) of the said sub-section (1) in respect of any such film where, before such commencement, the Board,—
 - (i) has examined the film; or
 - (ii) had the film examined by a revising committee referred to in rule 25 of the Cinematograph (Censorship) Rules, 1958; or
 - (iii) had the film examined by an examining committee referred to in rule 23 of the said rules

and neither the applicant makes a request for the reference, for further examination, of the film to a revising committee within the time allowed under the principal Act nor the Board considers it necessary to make such a reference.

- (b) The Board shall refer such film for further examination to a Revising Committee constituted under the amended Act where, before such commencement,—
 - (i) the film had been examined by an examining committee, referred to in the said rule 23, and either the applicant makes a request for the reference, for examination, of the film to a Revising Committee within the time allowed under the principal Act or the Board considers it necessary to make such a reference;
 - (ii) the film has been referred to a revising committee under the said rule 25 and the revising committee has not completed the examination of the film.
- (c) The Board shall refer the examination of such film to an Examining Committee constituted under the Amended Act, where, before such commencement,—
 - (i) the film has not been examined by the Board or referred for examination to an examining committee referred to in rule 23 of the said rules; or
 - (ii) the film has been referred for examination to an examining committee referred to in the said rule 23, but such committee has not completed the examination of the film.

Explanation.—For the purpose of this sub-section, an examining committee or a revising committee shall be deemed to have examined a film when it has sent the record of its examination of the film to the Chairman of the Board.

(2) All appeals under the principal Act, pending with the Central Government immediately before the commencement of this Act, shall be dealt with in accordance with the provisions of section 5D of the Amended Act.

(3) The Central Government shall exercise its revisional powers in respect of any matter which is pending before it, the Board or any authority under the principal Act immediately before the commencement of this Act, or which has been decided by the Board before such commencement, in accordance with the provisions of section 6 of the Amended Act.

Simla-2, the 3rd October, 1974

No. LLR-E(9) 2/74.—The following Acts recently passed by the Parliament which have already been published in the Gazette of India, Extraordinary, Part II, Section 1, are hereby republished in the Himachal Pradesh Government Rajpatra for the information of general public:—

1. The Coal Mines (Conservation and Development) Act, 1974 (28 of 1974).
2. The Major Port Trusts (Amendment) Act, 1974 (29 of 1974).
3. The Constitution (Thirty-fourth Amendment) Act, 1974.

M. C. PADAM,
Under Secretary (Judicial).

Assented to on 26th August, 1974.

THE COAL MINES (CONSERVATION AND DEVELOPMENT) ACT, 1974

(ACT No. 28 OF 1974)

AN

ACT

to provide for the conservation of coal and development of coal mines and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Coal Mines (Conservation and Development) Act, 1974.

(2) It extends to the whole of India.

(3) It shall come into force on such day as the Central Government may, by notification, appoint in this behalf.

2. *Declaration as to expediency of control by Central Government.*—It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation and development of coal mines to the extent hereinafter provided.

3. *Definitions.*—In this Act, unless the context otherwise requires,—

- (a) “appointed day” means the day on which this Act comes into force;
- (b) “blending” means the process of intimately mixing different varieties of coal so as to provide a mixture which on carbonisation results in coke;
- (c) “coal” includes coke in all its forms but does not include lignite;
- (d) “Chief Inspector” and “Inspector” means the persons respectively appointed as the Chief Inspector of Mines and Inspector of Mines under the Mines Act, 1952 (35 of 1952), and the provisions of that Act shall apply to the Chief Inspector and to all Inspectors while exercising their powers under this Act or the rules made thereunder;
- (e) “notification” means a notification published in the Official Gazette;

- (f) “prescribed” means prescribed by rules made under this Act;
- (g) “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);
- (h) “railway” shall have the meaning assigned to it in the Indian Railways Act, 1890 (9 of 1890);
- (i) “safety in coal mines” includes the safety of any railway situated on the surface above a coal mine;
- (j) “stowing” means the operation of filling, with sand or any other material, or with both, spaces left underground in a coal mine by the extraction of coal;
- (k) “washing” means such process or combination of processes as may be approved in this behalf by the Central Government by which the whole or any part of the shaley and mineral matter found in the coal is removed therefrom;
- (l) “agent”, “mine” and “owner” have the meanings respectively assigned to them in the Mines Act, 1952 (35 of 1952).

CHAPTER II

PROVISIONS RELATING TO CONSERVATION OF COAL AND DEVELOPMENT OF COAL MINES

4. *Power of Central Government in respect of conservation of coal and development of coal mines.*—(1) The Central Government may, for the purpose of conservation of coal and for the development of coal mines, exercise such powers and take, or cause to be taken, such measures as it may deem necessary or proper or as may be prescribed.

(2) Without prejudice to the generality of the foregoing power, the Central Government may, by order in writing addressed to the owner, agent or manager of a coal mine, require him to take such measures as it may think necessary for the purpose of conservation of coal or for development of coal mines, including—

- (a) in any coal mine, stowing for safety, or
- (b) the prevention of any factor which may adversely affect the conservation of coal or development of coal mine, or
- (c) washing of coal with a view to beneficiating and reducing the ash-contents of coal.

5. *Duty of owner to take steps for the conservation and development of coal mine.*—(1) The owner of a coal mine shall take, in relation to each coal mine owned by him, such steps as may be necessary, to ensure the conservation of coal and development of the coal mine.

(2) Without prejudice to the generality of the provisions of sub-section (1), the owner of a coal mine shall—

- (a) execute such stowing and other operations as may be necessary to be taken in furtherance of the objects of this Act in so far as such objects relate to the conservation of coal or development of the coal mine or the utilisation of coal obtained from the coal mine;
- (b) acquire such stowing and other materials as may be necessary for ensuring the conservation of coal, and safety in, the coal mine;
- (c) undertake research in relation to conservation of coal, development of coal mines and utilisation of coal;
- (d) plan and undertake development of the coal mines in a scientific manner;
- (e) undertake such other activity as the Central Government may, for the furtherance of the objects of this Act, direct.

6. Imposition of excise duties.—(1) With effect from the appointed day, there shall be levied and collected on all coal raised and despatched, and on all coke manufactured and despatched, from the collieries in India, such duty of excise, not exceeding rupees ten per tonne, as may be fixed from time to time by the Central Government by notification, and different rates of duty may be levied on different grades or description of coal or coke:

Provided that the Central Government may, by general or special order, exempt any special grade or grades or description of coal or coke from the levy of such duty of excise.

(2) For the purposes of sub-section (1), coal shall be graded by the Central Government in accordance with such specifications as may be laid down by that Government from time to time.

(3) All notifications issued under this section shall be laid, as soon as may be, before both Houses of Parliament.

7. Imposition of customs duty.—During the period in which any duty of excise is being levied under section 6, the Central Government may, by notification, impose on all coal (including soft and hard coke), imported or brought into India from any place outside India, a duty of customs (which shall be in addition to any duty of customs for the time being leviable under any other law), at the rates equivalent to the rates of duty of excise levied under section 6.

8. Collection of excise duties.—The duties of excise levied under section 6 shall be collected by such agencies and in such manner as may be prescribed.

9. Utilisation of proceeds of duties levied and collected under sections 6 and 7.—In each financial year, a sum not exceeding the net proceeds (determined in such manner as may be prescribed) of the duties of excise and customs levied and collected under sections 6 and 7, respectively, during the preceding financial year or years shall be disbursed by the Central Government in accordance with such procedure as may be prescribed to the owners, agents or managers of coal mines or to any other person for one or more of the following purposes, namely:—

- (a) conservation of coal and development of coal mines;
- (b) grant of stowing materials and other assistance for stowing operations;
- (c) execution of stowing and other operations for the safety in coal mines or conservation of coal;
- (d) prosecution of research work connected with conservation and utilisation of coal; and
- (e) any other purpose connected with the conservation of coal or development of coal mines, or transportation, distribution or utilisation of coal:

Provided that the Central Government may disburse to the owners, agents or managers of coal mines or to any other person, a sum not exceeding the aggregate of the net proceeds of the duties of excise collected under section 8 of the Coal Mines (Conservation, Safety and Development) Act, 1952 (12 of 1952), and remaining undisbursed before the commencement of this Act, for all or any of the purposes specified in this section.

10. Duty of owner to open Coal Mine Conservation and Development Account.—(1) The owner of every coal mine, to whom any money is disbursed under section 9, shall open a separate account in a scheduled bank, to be known as the "Coal Mine Conservation and Development Account" and shall credit to the said Account all sums so disbursed to him:

Provided that where it is necessary so to do in relation to the different groups of coal mines owned by an owner, separate accounts may be opened in relation to each such group of coal mines.

(2) The money standing to the credit of the Coal Mine Conservation and Development Account and accretions there to shall be applied by the owner of the coal mine to—

- (a) the furtherance of the objects of this Act;
- (b) the acquisition of stowing or other materials needed for stowing operations in coal mines;
- (c) the execution of stowing and other operations in furtherance of the objects of this Act;
- (d) the prosecution of research work connected with the conservation, development and utilisation of coal and safety in coal mines;
- (e) the planning and development of coal mines in a scientific manner; and
- (f) any other expenditure which the Central Government may direct to be defrayed out of the money standing to the credit of the Account.

(3) The Account, referred to in sub-section (1), shall be kept in such manner and in such form as may be prescribed, and every such account shall be audited by the same person by whom the accounts of the owner of the coal mine are audited.

11. Power of Inspectors.—(1) The Chief Inspector or any Inspector may make such examination and inquiries as he thinks fit in order to ascertain whether the provisions of this Act or of any rules and orders made thereunder are being complied with.

(2) The Chief Inspector or any Inspector may, with such assistance, if any, as he thinks fit enter, inspect and examine at any time by day or night any coal mine in order to ensure that stowing or any other operation has been, or is being, done effectively:

Provided that the power conferred by this sub-section shall not be exercised in such a manner as unreasonably to impede or obstruct the working of the mine.

(3) Without prejudice to the provisions of the Mines Act, 1952, (35 of 1952) the Chief Inspector or any Inspector may, by order in writing, addressed to the owner, agent or manager of a coal mine, require him to take such protective measures, including stowing, in the mine as the Chief Inspector or the Inspector may think necessary, if in the opinion of the Chief Inspector or Inspector—

- (a) the extraction or reduction of pillars in any part of the coal mine is likely to cause the crushing of pillars or the premature collapse of any part of the workings or otherwise endanger human life or the coal mine or a railway, or
- (b) adequate provision against the outbreak of fire or flooding has not been made by providing for the sealing off and isolation of any part of the coal mine or for restricting the area that might be affected by fire or flooding, as the case may be.

(4) The powers conferred on the Inspector under sub-sections (1), (2) and (3) may also be exercised by such officer of the Central Government as that Government may, by notification, specify in this behalf,

CHAPTER III

DISSOLUTION OF THE COAL BOARD AND TRANSFER OF
EMPLOYEES THEREOF

12. *Dissolution of the Coal Board.*—(1) On the appointed day, the Coal Board, established under section 4 of the Coal Mines (Conservation, Safety and Development) Act, 1952 (12 of 1952) shall stand dissolved.

(2) On the dissolution of the Coal Board,—

- (a) all rights and privileges of the Coal Board shall become the rights and privileges, respectively, of the Central Government;
- (b) the Central Government shall be deemed to be the lessee of all properties held by the Coal Board, immediately before the appointed day, under any lease and that Government shall hold the lease under the same terms and conditions under which the lease was held by the Coal Board;
- (c) all other properties, movable and immovable, including cash balances, reserve funds, investments and moneys lying to the credit of the Coal Mines Safety and Conservation Fund and the Coal Development Fund, and all other rights and interest in, or arising out of, such properties as were, immediately before the appointed day, in the ownership, possession, power or control of the Coal Board, and all books of account, registers, records and all other documents of whatever nature relating thereto, shall vest in the Central Government;
- (d) all borrowings, liabilities and obligations of the Coal Board, of whatever kind and subsisting immediately before the appointed day, shall be deemed, on and from the appointed day, to be the borrowings, liabilities or obligations, as the case may be, of the Central Government;
- (e) all contracts entered into, and all matters and things engaged to be done by, with or for, the Coal Board and subsisting immediately before the appointed day, shall be deemed, on and from the appointed day, to have been entered into or engaged to be done by, with or for, the Central Government;
- (f) all licences and permits granted to the Coal Board and in force immediately before the appointed day shall be deemed, on and from the appointed day, to have been granted to the Central Government and shall have effect accordingly.

13. *Power of Central Government to direct vesting of rights in a Government company.*—Notwithstanding anything contained in section 12, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by an order in writing that, the right title and interest of the Coal Board in relation to any property shall, instead of continuing to vest in it, vest in the Government company either on the date of publication of the direction or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the direction, and on such vesting, the liability or obligation, as the case may be, of the Coal Board in relation to such property shall instead of continuing to be the liability or obligation, of the Central Government, become the liability or obligation, as the case may be, of the Government company.

14. *Continuation of suits etc, against the Central Government.*—(1) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to the Coal Board is pending by or against such Board, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the dissolution of the Coal Board; but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the Government company in which the property of the Coal Board has become vested as the case may be.

(2) Where, before the appointed day, any cause of action for any suit or proceeding or any right to appeal arose in favour of, or against the Coal Board, and the institution of any suit or proceeding on such cause of action or the filing of such appeal was not barred before the appointed day, such suit or proceeding may be instituted or appeal may be filed by or against the Central Government or the Government company referred to in sub-section (1) as the case may be.

15. *Transfer of service of existing employees of Coal Board.*—(1) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, every officer or other employee of the Coal Board shall, on and from the appointed day, become an officer or other employee, as the case may be, of such Government company or organisation as the Central Government may, in writing, specify and shall hold his Office or service in such Government company or organisation, as the case may be, on the same terms and conditions and within the same rights to pension, gratuity and other matters as would have been admissible to him if the Coal Board had not been abolished and shall continue to do so unless and until his employment in the Government company or organisation is terminated or until his remuneration or terms and conditions of service are duly altered by the Government company or organisation, as the case may be.

Provided that the tenure, remuneration and other terms and conditions of service of any such officer or other employee shall not be altered to his disadvantage except with the previous approval of the Central Government or without such approval, except as a measure of punishment, under the rules of the Government company or the organisation concerned.

(2) Where any officer or other employee of the Coal Board becomes, under sub-section (1), an officer or other employee of any Government company or organisation, the period of service rendered, or deemed to have been rendered, by him under the Coal Board before the appointed day shall be deemed, for the purposes of fixation of pay and other emoluments, pension and other retirement benefits, to be the period of service rendered by him under the said Government company or organisation, as the case may be, as if the Government company or the organisation were in existence during the said period.

16. *No compensation to be paid for the transfer of services of any officer or other employee.*—Notwithstanding anything contained in any other law for the time being in force, the transfer of the service of any officer or other employee from the Coal Board to any Government company or organisation shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

CHAPTER IV

MISCELLANEOUS

17. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against the Central Government or against the Chairman or any other member of the Coal Board or any officer thereof or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in pursuance of the Coal Mines (Conservation, Safety and Development) Act, 1952 (12 of 1952) or any rule made thereunder.

18. *Power to make rules.*—(1) The Central Government may, by notification, and subject to the condition of previous publication, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the measures to be taken for the purpose of conservation of coal and maintenance of safety in coal mines;
- (b) the measures to be taken for the development of coal mines;
- (c) the manner in which, and the conditions subject to which, sums at the credit of the Coal Mine Conservation and Development Account may be applied;
- (d) the form in which the Coal Mine Conservation and Development Account shall be kept;
- (e) any other matter which is required to be, or may be, prescribed.

(3) Any rule made under the provisions of this Act may provide that the contravention thereof shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

(4) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall there-after have effect only in such modified form or be, of, no, effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

19. *Repeal.*—The Coal Mines (Conservation Safety and Development) Act, 1952 (12 of 1952) is hereby repealed.

Assented to on 29-8-1974.

THE MAJOR PORT TRUSTS (AMENDMENT)
ACT, 1974

(ACT No. 29 OF 1974)

AN

ACT

to amend the Major Port Trusts Act, 1963.

BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the major Port Trusts (Amendment) Act, 1974.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Amendment of section 1.*—In section 1 of the Major Port Trusts Act, 1963 (38 of 1963) (hereinafter referred to as the principal Act), in sub-section (3), the brackets and words “(not being the major port of Bombay, Calcutta or Madras)” shall be omitted.

3. *Amendment of section 2.*—In section 2 of the principal Act,

(a) after clause (i), the following clause shall be inserted, namely :—

“(ia) “immovable property” includes wharfage-rights and all other rights exercisable on, over, or in respect of, any land, wharf, dock or pier;”

(b) for clause (z), the following clause shall be substituted, namely :—

“(z) “vessel” includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson;”

4. *Amendment of section 3.*—In section 3 of the principal Act,—

(a) in sub-section (1), for clauses (c) and (d), the following clause shall be substituted, namely :—

“(c) not more than nineteen persons in the case of each of the ports of Bombay, Calcutta and Madras and not more than seventeen persons in the case of any other port who shall consist of—

(i) such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be appointed by that Government from amongst persons who are in its opinion capable of representing any one or more of such of the following interests as may be specified in the notification, namely:—

- (1) labour employed in the port;
- (2) the Mercantile Marine Department;
- (3) the Customs Department;
- (4) the Government of the State in which the port is situated;
- (5) the Defence Services;
- (6) the Indian Railways; and
- (7) such other interests as, in the opinion of the Central Government, ought to be represented on the Board;

Provided that before appointing any person to represent the labour employed in the port, the Central Government shall obtain the opinion of the trade unions, if any, composed of persons employed in the port and registered under the Trade Unions Act, 1926 (16 of 1926), and that

the number of persons so appointed shall not be less than two ;

(ii) such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be elected by such bodies and representing any one or more of such of the following interests as may be specified in the notification from among themselves, namely:—

- (1) ship owners ;
- (2) owners of sailing vessels ;
- (3) shippers; and
- (4) such other interests as, in the opinion of the Central Government, ought to be represented on the Board :

Provided that in a case where any such body is an undertaking owned or controlled by the Government, the person to be elected by such body shall be appointed by the Central Government.”;

(b) in sub-sections (3) and (4), for the words, brackets, letter and figure “clause (d) of sub-section (1)”, the words, brackets, figures and letter “sub-clause (ii) of clause (c) of sub-section (1)” shall be substituted.

5. *Amendment of section 4.*—In clause (c) of sub-section (1) of section 4 of the principal Act, —

- (a) for the words “not exceeding twenty-two”, the words “not exceeding seventeen” shall be substituted;
- (b) “in sub-section (iii) for the words, brackets, figures and letter “in sub-clauses (ii), (iii), (v) and (vi) of “clause (c)”, the words, brackets, figure and letter in sub-clause (i) of clause (c)” shall be substituted.

6. *Amendment of section 6.*—In clause (e) of section 6 of the principal Act, for the proviso, the following proviso shall be substituted, namely:—

“Provided that his disqualification shall not apply to the Chairman, Deputy Chairman or a Trustee who has been appointed to represent the labour employed in the port or appointed by virtue of office as officer or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board.”.

7. *Amendment of section 8.*—In sub-section (1) of section 8 of the principal Act, after clause (a) the following clause shall be inserted, namely:—

“(aa) has, in the opinion of the Central Government, ceased to represent the interest by virtue of which he was appointed or elected;”.

8. *Amendment of section 19.*—In section 19 of the principal Act,—

- (i) after the words “the Government”, the words “or an undertaking owned or controlled by the Government” shall be inserted;
- (ii) for the words and figures “the Indian Trade Unions Act, 1926 (16 of 1926)”, the words and figures “the Trade Unions Act, 1926, or other than as Officer or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board” shall be substituted.

9. *Amendment of section 23.*—To section 23 of the principal Act, the following proviso shall be added, namely:—

“Provided that the previous sanction of the Central Government shall be obtained for the inclusion in the said Schedule of those designations and grades of employees and the salaries, fees and allowances payable to them which the Central Government may, by order, specify and where no such order is made, of such posts (including the salaries and allowances attached thereto) which are required to be created by the Central Government, or for the creation of which the previous sanction of the Central Government is required, under this Act.”.

10. *Amendment of section 24.*—In sub-section (1) of section 24 of the principal Act, —

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) in the case of a post —

- (i) the incumbent of which is to be regarded as the Head of a department; or
- (ii) to which such incumbent is to be appointed; or
- (iii) the maximum of the pay-scale of which (exclusive of allowances) exceeds two thousand rupees,

be exercisable by the Central Government after consultation with the Chairman ;”;

(ii) for clauses (b) and (c), the following clause shall be substituted, namely:—

“(b) in the case of any other post, be exercisable by the Chairman or by such authority as may be prescribed by regulations :”.

11. *Amendment of Section 25.*—In section 25 of the principal Act;—

(i) in sub-section (1), —

- (1) in the opening paragraph, the word “promoting” shall be omitted;
- (2) for clauses (a) and (b), the following clauses shall be substituted, namely:—

“(a) in the case of an employee holding a post referred to in clause (a) of sub-section (1) of section 24, by the Chairman ;

(b) in any other case, by the Chairman or by such authority as may be prescribed by regulations :”;

- (3) in the provision, for the words “a Head of a department”, the words, brackets and letter “an employee referred to in clause (a)” shall be substituted ;

(ii) in sub-section (2),—

- (1) in the opening paragraph, the brackets and words “(not being a Head of a department)” shall be omitted ;
- (2) for clauses (a), (b) and (c), the following clauses shall be substituted, namely:—

“(a) to the Central Government, where such order is passed by the Chairman ;

(b) to the Chairman where such order is passed by any such authority as is prescribed by regulations under clause (b) of sub-section (1);”;

- (3) in the proviso, for the words "the Board", in both the places where they occur, the words "the Central Government" shall be substituted.

12. *Substitution of new section for section 27.*—For section 27 of the principal Act, the following section shall be substituted, namely :—

"27. *Power to create posts.*—Notwithstanding any thing contained in section 23, the power to create any post, whether temporary or permanent, shall,—

- (a) in the case of a post the holder of which is to be regarded as the Head of a Department or in the case of a post the maximum of the pay scale of which (exclusive of allowances) exceeds two thousand* rupees, be exercisable by the Central Government ;
- (b) in the case of a post [other than a post referred to in clause (a)], the maximum of the pay-scale of which exceeds such amount as the Central Government may, from time to time, by order fix in this behalf, or where no such amount has been fixed, is not less than one thousand rupees, be exercisable by the Board, with the previous sanction of the Central Government ;
- (c) in the case of any other post, be exercisable by the Chairman."

13. *Amendment of section 29.*—In sub-section (1) of section 29 of the principal Act, in clause (a), after words "and funds", the words "and all rights to levy rates" shall be inserted.

14. *Amendment of section 32.*—In section 32 of the principal Act, for the words "Whenever any immovable property which is required for the purposes of the Board cannot be acquired by agreement", the words "When any immovable property is required for the purposes of the Board", shall be substituted.

15. *Amendment of section 35.*—In sub-section (2) of section 35 of the principal Act, after clause (J), the following clauses shall be inserted, namely :—

- "(k) construction of models and plans for carrying out hydraulic studies ;
- (l) dry docks, slipways, boat basins and workshops to carry out repairs or over hauling of vessels, tugs, boats, machinery or other appliances."

16. *Insertion of new section 35A.*—After section 35 of the principal Act, the following section shall be inserted, namely :—

"35A. *Power with respect to landing places and bathing ghats.*—Without prejudice to the powers exercisable under section 35, the Board of Trustees for the port of Calcutta may, if it considers it necessary so to do for the purposes of this Act, —

- (i) provide for sufficient number of public landing places from and upon which the public shall be permitted to embark and to land free of charge;
- (ii) occupy any bathing ghat, or remove any landing place, within the port and thereafter prohibit the public from resorting to or using the same:

Provided that the Board shall not exercise any power under this section unless it reserves, sets out, makes and provides for the use of the public such number of bathing ghats within the port as the Central Government may direct."

17. *Amendment of section 36.*—Section 36 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely :—

- "(2) A Board may, if it considers it necessary or expedient in the public interest so to do, lend any of its vessels or appliances or the services of any of its employees to any person for such period not exceeding three months and on such terms and conditions as may be agreed upon between the Board and the person concerned."

18. *Amendment of section 42.*—In sub-section (1) of section 42 of the principal Act, —

- (i) in clause (c), the word "and" occurring at the end shall be omitted;
- (ii) in clause (d), the word "and" shall be inserted at the end and after the clause as so amended, the following clause shall be inserted, namely :—
- "(e) piloting, hauling, mooring, remooring, hooking, or measuring of vessels or any other service in respect of vessels."

19. *Amendment of section 43.*—In section 43 of the principal Act,—

- (i) in sub-section (1), for the proviso, the following proviso shall be substituted, namely :—

"Provided that no responsibility under this section shall attach to the Board —

- (a) until a receipt mentioned in sub-section (2) of section 42 is given by the Board; and
- (b) after the expiry of such period as may be prescribed by regulations from the date of taking charge of such goods by the Board."
- (ii) in sub-section (2) for the words "from the date of the receipt given for the goods", the words "from the date of taking charge of such goods by the Board" shall be substituted.

20. *Amendment of section 46.*—In section 46 of the principal Act, —

- (i) in sub-section (1), after the word "mooring", the words "or undertake any reclamation of fore-shore within the said limits" shall be inserted;
- (ii) in sub-section (2), after the word "mooring", the words "or under takes any reclamation of fore-shore" shall be inserted.

21. *Amendment of section 59.*—In sub-section (2) of section 59 of the principal Act, for the words "under any law for the time being in force", the words "under any law for the time being in force relating to customs, other than by way of penalty or fine" shall be substituted.

22. *Amendment of section 61.*—In section 61 of the principal Act, —

- (i) in sub-section (1), after the words "sell by public auction", the words "or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner" shall be inserted;

- (ii) in sub-section (2), for the words "the Official Gazette", the words "the Port Gazette, or where there is no Port Gazette, in the Official Gazette", shall be substituted.

23. *Amendment of section 62.*—In section 62 of the principal Act,—

- (i) in sub-section (1),—
 (a) for the words "the Official Gazette", the words "the Port Gazette or where there is no Port Gazette, in the Official Gazette" shall be substituted;
 (b) after the words "by public auction", the words "or by tender, private agreement or in any other manner" usual shall be inserted;
- (ii) in sub-section (3), after the words "by public auction", the words "or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing sell by tender, private agreement or in any other manner" shall be inserted.

24. *Amendment of section 63.*—In section 63 of the principal Act,—

- (i) in sub-section (1),—
 (a) in clause (c), after the words "in respect thereof", the words and brackets "including demurrage (other than penal demurrage) payable in respect of such goods for a period of four months from the date of landing" shall be inserted;
- (b) after clause (c) the following clauses shall be inserted, namely :—
 "(d) in payment of any penalty or fine due to the Central Government under any law for the time being in force relating to customs;
 (e) in payment of any other sum due to the Board.";
- (ii) for sub-section (2), the following sub-sections shall be substituted, namely :—
 "(2) The surplus, if any, shall be paid to the importer, owner or consignee of the goods or to his agent, on an application made by him in this behalf with in six months from the date of the sale of the goods.
 (3) Where no application has been made under sub-section (2), the surplus shall be applied by the Board for the purposes of this Act."

25. *Substitution of new section for section 65.*—For section 65 of the principal Act, the following section shall be substituted, namely :—

"65. *Grant of port-clearance after payment of rates and realisation of damages, etc.*—If a Board gives to the officer of the Central Government whose duty it is to grant the port-clearance to any vessel at the port, a notice stating,—

- (i) that an amount specified there in is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel; or
 (ii) that an amount specified therein is due in respect of any damage referred to in section 116 and such amount together with the cost of proceedings for the recovery thereof before a Magistrate under that section has not been realised,

such officer shall not grant such port-clearance until the amount so chargeable or due has been paid or, as the case may be, the damage and cost have been realised."

26. *Insertion of new sections 74A and 74B.*—After section 74 of the principal Act, the following sections shall be inserted, namely :—

"74A. *Recognition as holder of Port Trust securities in certain cases.*—The person to whom a duplicate security has been issued under section 73 or a new security or securities has or have been issued under section 74 shall be deemed for the purposes of section 74B to have been recognised by the Board as the holder of the security or securities; and a duplicate security or a new security or securities so issued to any person shall be deemed to constitute a new contract between the Board and such person and all persons deriving title there-after through him.

74B. *Legal effect of recognition by the Board under section 74A.*—No recognition by the Board of a person as the holder of a Port Trust security or securities shall be called in question by any court so far as such recognition affects the relations of the Board with the person recognised by it as the holder of a Port Trust security or securities, or with any person claiming an interest in such security or securities; and any such recognition by the Board of any person shall operate to confer on that person a title to the security or securities subject only to a personal liability to the rightful owner of the security or securities for money had and received on his account."

27. *Amendment of section 75.*—In section 75 of the principal Act for the words and figures "the Indian Limitation Act, 1908 (9 of 1908)", the words and figures "the Limitation Act, 1963 (36 of 1963)" shall be substituted.

28. *Amendment of section 78.*—In clause (a) section 78 of the principal Act, for the words "other than any sum set apart by the Board as the sinking fund for the purpose of paying off any loan; and" the following shall be substituted, namely :—
 "other than—

- (i) any sum set apart by the Board—

- (1) as the sinking and for the purpose of paying off any loan; or
 (2) for the payment of pension to its employees; or
 (ii) the provident or pension fund established by the Board; and"

29. *Amendment of section 82.*—In sub-section (1) of section 82 of the principal Act, for the words "by two trustees, one being the Board and the other a person appointed by the Central Government", the words "by the Board" shall be substituted.

30. *Amendment of section 88.*—In sub-section (1) of section 88 of the principal Act,—

- (i) for clause (g), the following clause shall be substituted, namely :—

"(g) such sums as may, from time to time be agreed upon by the Board and a State Government or the Central Government or any other authority, as a reasonable contribution payable by the Board towards the expenses in connection with the watch and ward functions of the police force or the Central Industrial

Security Force or any other force which the State Government or the Central Government, or the other authority as the case may be, may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;";

(ii) in clause (1), after the words "application of the Board", the words "or otherwise" shall be inserted.

31. *Amendment of section 102.*—In section 102 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

(2) The accounts of the Board shall be audited —

(i) once in every year; and

(ii) if so required by the Comptroller and Auditor General of India, concurrently with the compilation of such accounts, by the Comptroller and Auditor General of India or such other persons as may be appointed by him in this behalf and any amount payable to him by the Board in respect of such audit shall be debitable to the general account of the Board."

32. *Amendment of section 116.*—In section 116 of the principal Act, after the words "any Board", the words "or any movable property belonging to any Board," shall be inserted.

33. *Insertion of new section 117A.*—After section of the principal Act, the following section shall be inserted, namely:—

"117A.—*Person interested in contracts, etc. with the board to be deemed to have committed an offence under section 168 of the Indian Penal Code.*—Any person who, being a Trustee or an employee of the Board, acquires, directly or indirectly, any share of interest in any contract or employment with, by or on behalf of, any Board shall be deemed to have committed an offence under section 168 of the Indian Penal Code (45 of 1860):

Provided that nothing in this section shall apply to a person who is deemed not to have a share or interest in any contract or employment under the proviso to clause (d) of section 6."

34. *Amendment of section 118.*—In section 118 of the principal Act, for the words "magistrate of the first class", the words "Metropolitan Magistrate or Judicial Magistrate of the first class" shall be substituted.

35. *Amendment of section 122.*—In sub-section (3) of section 122 of the principal Act, for the words "in which it is so laid", the words "immediately following the session" shall be substituted.

36. *Amendment of section 123.*—In section 123 of the principal Act, for clause (f), the following clause shall be substituted, namely:—

"(f) for the safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, railways, tramways, buildings and other works constructed or acquired by, or vested in, the Board, or of any land or foreshore acquired by, vested in, the Board under this Act;";

37. *Amendment of section 124.*—In sub-section (1) of section 124 of the principal Act, after the words "under this Act", the words, brackets and figures "other

than a regulation made under sub-section (2) of section 17", shall be inserted.

38. *Amendment of section 133.*—In section 133 of the principal Act, after sub-section (2), the following sub-sections shall be inserted namely:—

"(2A) on the application of this Act to the port of Bombay the Bombay Port Trust Act, 1879, (Bombay Act 6 of 1879), except the provisions thereof relating to municipal assessment of the properties of the port of Bombay and matters connected therewith, shall cease to have force in relation to that port.

(2B) On the application of this Act to the port of Calcutta the Calcutta Port Act, 1890, (Bengal Act 3 of 1890), except the provisions thereof relating to municipal assessment of the properties of the port of Calcutta and matters connected therewith, shall cease to have force in relation to that port.

(2C) On the application of this Act to the port of Madras, the Madras Port Trust Act, 1905, (Madras Act 2 of 1905), shall cease to have force in relation to that port.

(2D) Notwithstanding anything contained in sub-sections (2A), (2B) and (2C),—

(a) every Trustee of the Board of Trustees of the port of Bombay or Madras holding office as such immediately before the application of this Act to the port of Bombay or Madras, as the case may be, shall be deemed to have been appointed or elected as such under this Act shall continue to hold such office after such application until a Board of Trustees in respect of that port is constituted under the provisions of this Act;

(b) every Commissioner of the port of Calcutta holding office as such immediately before the application of this Act to that port shall be deemed to have been appointed or elected as a Trustee under the provisions of this Act and shall continue to hold such office after such applications until a Board of Trustees in respect of that port is constituted under the provisions of this Act;

(c) anything done or any action taken or purported to have been done or taken (including any rule, regulation, bye-law, notification, order or notice made or issued or any resolution passed or any appointment or declaration made or any licence, permission or exemption granted or any rates, charges or duties levied or any penalty or fine imposed) under the Acts referred to in sub-sections (2A), (2B) and (2C) shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(2E) Upon the cesser of operation of the provisions of the Acts referred to in sub-section (2A), (2B) and (2C), the provisions of section 6 of the General clauses Act, 189 (10 of 1897), shall apply as if the provisions first mentioned were provisions contained in a Central Act and such cesser of operations were a repeal; and the mention of particular matters in sub-section (2D) shall not be held to prejudice or affect the general application of the said section 6 with regard to the effect of repeals."

39.—*Amendment of section 134.*—To section 134 of the principal Act, the following proviso shall be added, namely:—

“Provided that no such order shall be made in respect of a port after the expiry of a period of two years from the appointed day”.

40. *Transitional provisions.*—Every member of the Board of Trustees constituted under section 3 of the principal Act, in respect of any major port and holding office as such immediately before the commencement of this Act, shall continue to hold such office after such commencement until the reconstitution of the Board in accordance with the provisions of the principal Act, as amended by this Act.

Assented to on 7-9-74.

THE CONSTITUTION (THIRTY-FOURTH AMENDMENT) ACT 1974

AN
ACT

Further to amend the Constitution of India.

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Constitution (Thirty-fourth Amendment) Act, 1974.

2. *Amendment of Ninth Schedule.*—In the Ninth Schedule to the Constitution, after entry 66 and before the *Explanation*, the following entries shall be inserted, namely:—

“67. The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Andhra Pradesh Act 1 of 1973).

68. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 (Bihar Act I of 1973).

69. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1973 (Bihar Act IX of 1973).

70. The Bihar Land Reforms (Amendment) Act, 1972 (Bihar Act V of 1972).

71. The Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972 (Gujarat Act 2 of 1974).

72. The Haryana Ceiling on Land Holdings Act, 1972 (Haryana Act 26 of 1972).

73. The Himachal Pradesh Ceiling on Land Holding Act, 1972 (Himachal Pradesh Act 19 of 1973).

74. The Kerala Land Reforms (Amendment) Act, 1972 (Kerala Act 17 of 1972).

75. The Madhya Pradesh Ceiling on Agricultural Holding (Amendment) Act, 1972 (Madhya Pradesh Act 12 of 1974).

76. The Madhya Pradesh Ceiling on Agricultural Holding (Second Amendment) Act 1972 (Madhya Pradesh Pradesh Act 13 of 1974).

77. The Mysore Land Reforms (Amendment) Act, 1973 (Karnataka Act 1 of 1974).

78. The Punjab Land Reforms Act, 1972 (Punjab Act 10 of 1973).

79. The Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Rajasthan Act 11 of 1973).

80. The Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (Tamil Nadu Act 24 of 1969).

81. The West Bengal Land Reforms (Amendment) Act, 1972 (West Bengal Act XII of 1972).

82. The West Bengal Estates Acquisition (Amendment) Act, 1964 (West Bengal Act XII of 1974).

92. The West Bengal Estates Acquisition (Amendment) Act, 1964 (West Bengal Act XXXII of 1964).

83. The West Bengal Estates Acquisition (Second Amendment) Act, 1973 (West Bengal Act XXXIII of 1973).

84. The Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1972 (Gujarat Act 5 of 1973).

85. The Orissa Land Reforms (Amendment) Act, 1974 (Orissa Act 9 of 1974).

86. The Tripura Land Revenue and Land Reforms (Second Amendment) Act, 1974 (Tripura Act 7 of 1974).”

भाग 7—भारतीय निर्वाचन आयोग (Election Commission of India) की वैधानिक अधिसूचनाएं तथा अन्य निर्वाचन सम्बन्धी अधिसूचनाएं

ELECTION DEPARTMENT

NOTIFICATION

Simla-2, the 28th August, 1974

No. 3-16/74-Elec.—The Election Commission of India's Notification No. 82/HP-LA/8/72, dated the 23rd August, 1974 containing the order, dated the 2nd August, 1974, of the High Court of Himachal Pradesh at Simla in Election Petition No. 8 of 1972, is hereby published for general information.

By order,

L. TOCHHAWNG,
Chief Electoral Officer,
Himachal Pradesh.

ELECTION COMMISSION OF INDIA

NOTIFICATION

NIRVACHAN SADAN,
JASHOAK ROAD,

New Delhi-1, the 23rd August, 1974

No. 82/HP-LA/8/72.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby published the judgment dated the 2nd August, 1974 of the High Court of Himachal Pradesh in election petition No. 8 of 1972.

Copy of the Judgment delivered on 2nd August, 1974 by Hon'ble Mr. Justice Chet Ram Thakur, Judge, in the election petition No. 8 of 1972, titled:—

Shri Amar Chand, Petitioner through Mr. S. Malhotra, Advocate with Mr. S. S. Ahuja and Mr. Bhawani Singh, Advocates.

Versus

Shri Sukh Ram, respondent through Mr. Chhabil Dass, Advocate, along with Mr. D. P. Sud, Advocate.

COPY OF THE JUDGMENT

IN THE HIGH COURT OF HIMACHAL PRADESH
SIMLA-I

Election Petition No. 8 of 1972

Date of Decision: 2-8-1974

Shri Amar Chand, Petitioner through Mr. S. Malhotra, Advocate with Mr. S. S. Ahuja and Mr. Bhawani Singh, Advocates.

Versus

Shri Sukh Ram, respondent through Mr. Chhabil Dass, Advocate, along with Mr. D. P. Sud, Advocate.

For approval and Signature.

The Hon'ble Mr. Justice Chet Ram Thakur, J.
The Hon'ble Mr. Justice.

1. Whether approved for reporting ? Yes.
2. Whether there are remarks about the quality of judgement of the Court or Officer?

CHET RAM THAKUR, J.

The elections to the Himachal Pradesh Legislative Assembly were to be held in February, 1972 and the dates for filing of the nomination papers, were fixed from 1st February, 1972 to 8th February, 1972, the date for scrutiny was 9th February, 1972 and the last date of withdrawal was 11th February, 1972. Accordingly from 68-Mandi Assembly Constituency Sarv, Shri Anant Ram, Abhidurayee *alias* Abhilashi, Prem Singh, Sukh Ram, respondent and Bhagat Ram filed their nomination papers. On the date of scrutiny the nomination papers of S/Shri Abhidurayee *alias* Abhilashi and Prem Singh were rejected by the Returning Officer leaving Sarvshri Bhagat Ram, Anant Ram and Sukh Ram respondent in the field to contest the elections. Shri Sukh Ram respondent was declared elected whereas the other candidates lost. The petitioner who is a voter of 68-Mandi Assembly Constituency has filed this election petition calling in question the election of Shri Sukh Ram respondent.

The petitioner contended that Shri Abhilashi was not holding any office of profit and his nomination paper had wrongly been rejected. Further that it was also wrong that Shri Prem Singh was a contractor and he had got subsisting contracts. His nomination paper too had wrongly been rejected. The provisions of section 9-A of the Representation of People Act are not attracted at all as there is no subsisting contract. It was also pleaded that the respondent was guilty of corrupt practices as defined in sub-section (1) and (2) of section 123 of the Act, i.e., bribery and undue influence and of getting assistance of such persons who were in the service of the Government as envisaged under section 123 (7) of the Representation of People Act,

1951 (shortly called the Act). It was on these grounds that the petitioner prayed for declaration that the election of the respondent was void.

It was pleaded by the respondent that Shri Prem Singh was a contractor and was under a contract with the Government of Himachal Pradesh for the execution of the forest works and for the sale of the goods and as such he was disqualified to contest the election. Similarly the nomination paper of Shri Abhilashi had rightly been rejected because he was holding an office of Profit under the Government of India. The other allegations with regard to corrupt practices were denied in tota. The following issues were settled on 25th of July, 1972:—

- (1) Whether the nomination papers of Shri Abhilashi and Shri Prem Singh were illegally rejected by the returning officer, if so, its effect ? (O.P.P.).
- (2) Whether the respondent is guilty of corrupt practices, as enumerated in para. 8, 9, 10, 11, 12, 13, 14, 17 (c), 19, 20 (a) and 20 (d) of the petition ? (O.P.P.).

and an additional issue was also framed on 23rd of August, 1972 to the following effect:—

Whether Shri Prem Singh was holding the contracts, as mentioned in 18 (ii) of the amended written statement on the date of scrutiny of the nomination papers. If so, what is its effect ?

(O.P.R.).

In so far as issue No. 2 is concerned the petitioner had given up this issue and, therefore, it does not call for any findings.

The additional issue relates to the allegations of contracts, which Shri Prem Singh is alleged to be holding on the relevant date. This additional issue was raised out of the pleas taken in the amended written statement by the respondent. The issue No. 1 relates to the rejection of the nomination papers of Shri Abhilashi and Shri Prem Singh. The nomination papers of Shri Abhilashi was rejected on the ground that he was holding an office of profit, whereas the nomination papers of Shri Prem Singh was rejected on the ground that he had some contracts under the Government and, therefore, this issue has got two parts. This additional issue also relates to the second part of the first issue and, therefore, this additional issue can very conveniently be disposed of along with the second part of the first issue.

FINDINGS

First I will take up the case of Shri Abhilashi. The order of rejection is Ex-PW-90H, dated 9th February, 1972. The ground for rejection is that he was working as Charge-man special Grade I in the B. S. L. Electrical Sub-Division No. 5, Pandoh Division, Mandi, Himachal Pradesh which is a Beas Project being constructed by the Government of India on behalf of the beneficiary States. Obviously, according to the Returning Officer, Shri Abhilashi becomes an employee of the Government of India and is disqualified to contest the elections under Article 191 of the Constitution of India.

The relevant portion of Article 191 of the Constitution reads as:—

- “(1) A person shall be disqualified for being chosen as

and for being a member of the Legislative Assembly or Legislative Council of a State—

- (a) If he holds any office of profit under the Government of India or the Government of any State specifies in the First Schedule other than an office declared by the Legislature of the State by Law not to disqualify its holder.

The submission made by the learned counsel for the respondent is that Shri Abhilashi was holding a post under the Government of India or the participating State and in so far as the Beas Construction Board (hereinafter referred to as B. C. B.) is concerned it was a link of the Central Government as the construction of the same related to the affairs of the Government of India, whereas the submission made by the learned counsel for the petitioner is that the B. C. B. is a Corporation and an autonomous body. Shri Abhilashi is an employee of the B. C. B. and that the B. C. B. is not a link of the Central Government and that Shri Abhilashi could not be said to be holding an office of profit under the Government of India or Government of any State, and, that being an employee of a Corporation he did not entail any disqualification for election to the legislature.

We have, therefore, to determine whether the Beas Construction Board is an Corporation, i. e. an autonomous body or it is a limb of the Central Government of the participant States. A "Corporation" according to Stroud's Judicial Dictionary is that the civilian call universitatem or collegium, and is a body politic authorised to take and grant, having a common seal, etc. The learned counsel for the respondent contends that this Beas Construction Board does not answer the definition of a Corporation and he submits that the tests to find out whether a particular institution is a Corporation or not are those as laid down by the Supreme Court in the *Board of Trustees, Ayurvedic and Unani Tibbia College, Delhi vs. State of Delhi (New Delhi Administration) and another* (AIR 1962 S. C. 458). An essential element in the legal conception of corporation is that its identity is continuous, that is that the original member or members and his or their successors are one. In law the individual corporators, or members of which it is composed are something wholly different from the Corporation itself; for corporation is a legal person just as much as an individual. Thus, it had been held that a name is essential to a corporation; that a corporation aggregate can, as a general rule, only act or express its will by deed under its common seal; that at the present day in England a Corporation is created by one or other of two methods, namely, by Royal Charter of incorporation from the Crown or by the authority of Parliament that is to say by or by virtue of statute. There is authority of long standing for saying that the essence of a corporation consists in (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place and (5) words sufficient in law to show incorporations. No particular words are necessary for the creation of corporation; any expression showing an intention to incorporate will be sufficient. Further it says, "A corporation aggregate has been defined as a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form and vested by the policy of the law with the capacity of acting in several aspects as an individual, particularly of taking and granting property of contracting obligations and suing and being sued, of enjoying privileges and immunities in common,

and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence.

Further reliance is placed on *G. Narayan Swamy Naidu vs. C. Krishnamurthi and another* (AIR 1958 Madras 343). In this case nomination paper of one Shri G. Krishnamurthi was rejected by the Returning Officer on the ground that Shri Krishnamurthi had held an office of profit under the Government of India, in that he was salaried employee—a junior Inspector—under the Life Insurance Corporation of India and was, therefore, disqualified to stand for election under articles 191(1) of the Constitution. After examining the scheme of the statute constituting the Corporation the High Court came to the conclusion that the Life Insurance Corporation was not a wing of the Government but it was an autonomous body. Further on it was held that the test for determining constitutional position of Public Corporation as either a department of the Government or as a servant of the State, if the statute in terms answer the question, the need for any further enquiry is obviated. But in the absence of such statutory declaration or provision, the intention of Parliament has to be gathered from the provisions of the statute constituting the Corporation. There provisions have to be judged in the light of the following. First the incorporation of the body though not determinative is of some significance, as an indication by Parliament of its intention to create a legal entity with a personality of its own, distinct from the State; Secondly, the degree of control exercised by the Minister over the functioning of the Corporation is a very relevant factor, a complete dependence on him marking it as really a governmental body, while comparative freedom to pursue its administrative being treated as an element negating an intention to constitute it a Government agent, this semi-autonomy deriving from the desire to avoid pleary parliamentary control the details of its normal administration; third is the degree of dependence of the Corporation on the Government for its financial needs. Much emphasis should not be laid on the historical aspect. The test of function appears to be equally unsafe for identifying a public corporation as a part of the mechanism of the State.

Further attention has been invited to Halsbury law of England, Second Edition Volume 8 part I at page 3, which deals with the nature of corporations, according to which a corporation aggregate has been defined as a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers upon it, either at the time of its creation or at any subsequent period of its existence. Further attention is invited to paras 24, 25 and 26 of Part II of the aforesaid book which deals with the creation of corporations. Para 25 says that four things are essential to the creation of corporation, namely; (1). Lawful authority of incorporation; (2) the person or persons to be incorporated; (3) a corporate name; (4) words sufficient in law, but no particular form of words is necessary.

On the basis of the test, as laid down in the Board of

Trustees Ayurvedic and Unani College, Delhi and G. Narayanswamy Naidu (Supra) and the definition of corporations as given in Halsbury's Law of England, the learned counsel for the respondent says that the B. C. B. is not an autonomous or a corporate body as it does not satisfy the tests or the requirements as laid down in the aforesaid authorities. He has also referred me to sections 78, 79 and 80 of the Punjab Reorganisation Act, 1966.

On the other hand the learned counsel for the petitioner has placed reliance on *Shri P.C. Jain Offg. Sub-Divisional Officer vs. The Union of India and others* [1971 S.L.R. (2) (Pb. & Hy.) 646], *B.D. Gupta vs. The State of Haryana and another* (1970 Cor. L.J. 59), *Sewa Singh and other vs. State of Punjab and another* [1968 Cor. L.J. (Punjab and Haryana) 63], *Amrit Rai Sood Sub-Divisional Officer vs. The State of Punjab through Secretary to Government Punjab, Irrigation and Power Department Chandigarh and others* (1970 S.L.R. 170) and on an unreported case of the Punjab and Haryana High Court Civil writ No. 4822 of 1971—*Ajit Parshad Handa (Temporary Engineer), Sub-Divisional Officer P.W.D. (Irrigation Branch), Thein Dam Circle, Chandigarh and another vs. The State of Punjab through Secretary to Government Punjab and six others* decided on 5th April, 1972. From these authorities the endeavour of the learned counsel for the petitioner is that the B.C.B. is an independent and autonomous body. Learned counsel for the respondent, however, says that these authorities are not relevant for the determination of the point in question because the observations made in these authorities are *obiter dicta* and the point for determination was not whether the B.C.B. was an autonomous body.

Before I deal with these authorities I must refer to the relevant provisions of the Punjab Reorganisation Act, 1966 (Shortly referred to as the 1966 Act). Under sub-section (1) of section 80, the construction of the Beas Project shall on and from the appointed day, be undertaken by the Central Government on behalf of the successor States and the State of Rajasthan. Under the proviso, the funds are to be provided to the Central Government by the successor States and the State of Rajasthan for the expenditure on the project (including the expenses of the Board) referred to in sub-section (2). The appointed day means the first day of November, 1966. So, according to this the construction of Beas Project is to be undertaken by the Central Government on behalf of the successor States and the State of Rajasthan with effect from 1-11-1966. Under sub-section (2) of section 80, it has been provided that for the discharge of its functions under sub-section (1), the Central Government may (a) by notification in the Official Gazette and in consultation with the Government of the successor States and the State of Rajasthan, constitute a Board to be called the Beas Construction Board with such members as it may deem fit and assign to the Board such functions as it may consider necessary. Under sub-section (3) the notification constituting a Board under clause (a) of sub-section (2) may empower the Board to appoint such staff as may be necessary for the efficient discharge of its functions. The B.C.B. was constituted by a notification dated 1st October, 1967. Therefore, from the reading of sub-section (1) of section 80, it would follow that the Central Government had been given the power to undertake the construction of the project on behalf of the successor State and the State of Rajasthan only as a temporary measure from the 1st November, 1966, till such time the Central Government constitute the Board as contemplated under sub-section (2) (a) of section 80 of the 1966 Act. This notification came into force with effect from 1st November, 1967 and thereafter it was the

Board which was constituted from carrying out the work of the project.

Under sub-section (3) of section 80, the Board has also been given power to appoint such staff as may be necessary for the efficient discharge of its functions and by this notification, Exhibit PW 6/E under the note after composition of the Board are mentioned the functions that have been assigned to it by the Central Government. Amongst the powers so assigned are the powers of delegation of such powers both technical and financial, as the Board may think necessary, to the General Manager and other officers employed on the execution of the project. Secondly, the regulation of the construction of different parts of the project and preparation of phased programme of early utilisation of irrigation and power benefits and, thirdly, the Board may appoint such staff (other than that referred to in paragraph 2 and the G.M.B.P.) as may be necessary for the efficient discharge of its functions. From the above, therefore, it appears that the Board is an independent body and it has been assigned full control for the execution of the project. Learned counsel for the respondent has invited my attention to section 78 and 79 of the 1966 Act. Section 78 deals with rights and liabilities in regard to Bhakra-Nangal Project and Beas Project as from the appointed day. Therefore this section has got nothing to do with the B.C.B. section 79 also deals with the Bhakra Management Board and this is also not a relevant section. The submission, as it appears, is that the reading of these two sections would reveal that these are affairs of the participating States for discharging the duties in respect of Bhakra-Nangal Project and Beas Project. Under section 78 the property did not vest in the Board but in the successor States. That is true. It was so intended on the appointed day because the Board was to be constituted in terms of sub-section (2) of section 80 only after the appointed day by the Central Government, who on the appointed day was entrusted with the discharge of the functions of the successor States for the execution of the Beas Project. From this it cannot be inferred that the Board is only a representative body of the Central Government and no powers is given to the Board to dispose of the property. On reading section 80 (2) of the 1966 Act it cannot be construed that the Board is only a representative body of the Central Government or that the Central Government had undertaken the construction of the Beas Project through the agency of the B.C.B. It also cannot be inferred that the Central Government had the effective control over the Board so as to say that it is a limb of the Central Government. The Board has got the power to dispose of the property and to sue and be sued, as I would be referring shortly to the statement of Shri Mukerjee (R.W.8).

Learned counsel further contends that it has no funds of its own, the funds are supplied by the Central Government and there is no freedom to the Board to do any act without the approval of the Central Government. But this submission of his does not appear to be correct. The funds are not supplied by the Central Government but the same are supplied to the Central Government by the beneficiary States including the State of Rajasthan and the Central Government in turn supplies the same to the Board. The control exercised on the Board by the Central Government is only in the sense that it has got the power to issue broad guidelines of policy and it cannot be said to be an effective control, and the Board has got complete freedom to do any act within its sphere. The authority *Mohd. Yaqub vs. Union of India (Delhi)* (1970 S.L.R. 763) relied upon by the learned counsel for the respondent is also not of any assistance to him because it deals with the apportionment

of the assets and liabilities between the successor States under the provisions of section 67 (3) and (4) of the 1966 Act.

Shri B. K. Mukerjee (R.W. 8) is a Superintending Engineer (Admn.) in the B.S.L. Sundernagar. He has admitted that the Board has its own budget and payments to all the employees are made out of the budget of the Board. It is also manifest from sub-section (3) of section 80 of the 1966 Act that the Board shall appoint its own staff as may be necessary for the efficient discharge of its functions. Shri Mukerjee no doubt has stated in examination-in-chief that he is authorised by the Government of India to sue and defend the suits on behalf of the Union of India in respect of the B.S.L. Project, but it may be stated that he has not been able to produce any such authority to evidence the truthfulness of his statement. He has also admitted that there are suits pending against the B.C.B. in the court of the Senior Sub-Judge, Bilaspur, and that the B.C.B. has also filed suits in the court of the Senior Sub-Judge, Manali. Therefore, this also falsifies the statement of Shri Mukerjee that the Board cannot sue or be sued and that it is the Union of India which has authorised him to sue on behalf of the Union of India in respect of the affairs of the B.S.L. Project. He has further on stated that no token tax, sales tax or route permit fee is paid to the Himachal Government in respect of the vehicles engaged in the work of the project on the ground that this is the property of the Central Government and as such it is exempt from payment of any tax. This statement of his is based upon the opinion of the Ministry of Law, Government of India, which is merely an opinion and which cannot have any evidentiary value or binding force. The fact remains, as admitted by the witness himself, that the Himachal Pradesh Government had been repeatedly making demands for payment of taxes. Therefore, his statement cannot be accepted as a gospel truth to determine the status of the B.C.B. The intention to create the corporation is quite manifest from the language of section 80 (2) itself and it is not necessary that all those tests, as have been laid down in the authorities relied upon by the learned counsel for the respondent, should be there. The intention to create, as already stated is already there in section 80(2) (a) of the 1966 Act. The Board has the power to sue and be sued as is apparent from the statement of Shri Mukerjee. The Board has got full power to employ its own staff as it may be considered necessary for the efficient discharge of the works of the project. The Board is given the name as "Beas Construction Board". It has specifically been provided under sub-section (2) (a) of section 80 that the Central Government may constitute a Board to be called the Beas Construction Board with such members as it may deem fit and assign to the Board such functions as it may consider necessary. Therefore, from this it would follow that the B.C.B. is a legal entity with its own name and in my opinion it is an autonomous body having all the necessary elements for the constitution of a corporate body.

In P. C. Jain's case (supra) it had been held that this Board was constituted as an autonomous body and that it is not an agent of the Central Government. There is no doubt that the case related with regard to the recall of an officer from the Beas Project by the State Government and it has been specifically provided that the Board may at any time in consultation with the State or the Electricity Board concerned and with the approval of the Central Government return any such person for service under that Government or Board and the State Government had no power to recall any person at its own will without its approval of the Central Government. There-

fore, it was necessarily the scope of section 80(3) of the 1966 Act that fell for consideration in that case and it was held that the Board was constituted as an autonomous body and that it was not an agent of the Central Government. Consequently, it cannot be said to be an *obiter dicta*.

In B. D. Gupta's case (supra) also the scope of section 80 (2) (a) of the 1966 Act was considered and the case related to the retirement of an employee who had been allotted to the State of Haryana and was working in the B.S.L. Project on 1-10-1970, when the B.C.B. was constituted. Therefore, in my opinion, this authority also cannot be said to be *obiter dicta*.

In Sewa Singh's case (supra) 11 persons filed a petition praying for quashing the order of the Chief Engineer transferring them from the Irrigation Branch, H.P., Chandigarh, to the Beas Project Administration and undertaking of the Central Government outside the administrative control of the Punjab Government. During the pendency of this writ petition, a notification constituting the B.C.B. on 1st October, 1967 came to be issued and it was argued by the petitioners that under section 80 the Board had the power to appoint such staff as may be necessary for the discharge of its functions and such control as the Central Government had, now passed on to Board and that the order of transfer passed by the Chief Engineer had become infructuous and it was observed that the Chief Engineer certainly cannot transfer the petitioners to serve under the B.C.B. which is an independent body. This undoubtedly was an *obiter dicta* because this was not directly a question that was involved in the case. But still the fact remains that in that authority also it had been considered whether the B.C.B. was an independent body and it held in the affirmative.

In Amrit Rai Sood's case (supra) the Chief Engineer had issued a letter intimating the petitioner that his services would not be required beyond the 14th August, 1968 (fore-noon) and the petitioner challenged this order contending that the Punjab State had no jurisdiction to issue order because the petitioner was under the employment of B.C.B. and that he could not be retired before the age of 58 and it was held that the appointing authority in respect of the employees was B.C.B. and no more the State Government and for that reason the Chief Engineer had no jurisdiction to issue the order intimating him that his services would not be required beyond a particular date. This is also not a direct authority on the point.

In Ajit Parshad Handa's case (supra) which is an unreported case, the petitioners were transferred under the orders of the Chief Engineer to the Beas Project by his orders of different dates passed in May, July and August, 1971 and the petitioners challenged those orders on the ground that the petitioners could be compelled to serve only in the areas within the administrative control of the State Government which employed them and that they cannot be transferred to work under an independent body or Board not subordinate to the State Government. It was held in these circumstances that the Board is an independent and autonomous body with no direct control exercisable over it by the State Government. Further that the Board was not an agent of the Central Government. I think this was a point involved in the case whether the B.C.B. was within the administrative control of the State Government or it was an independent body to which the services of the petitioners had been transferred. In my opinion, this is not at all an *obiter dicta* rather it is

a direct authority on the point. Therefore, in these circumstances, I am of the view that the B.C.B. is an independent and autonomous body.

The further question is whether Shri Abhilashi is holding an office of profit. The Returning Officer has held that Shri Abhilashi was holding an office of profit and as such he was disqualified. Shri Abhilashi, whose name is also Surinder Paul, is admittedly recorded in the Service Book as "Surinder Paul" showing him as a Charge-man special. But it is not known from his service book as to since when he is working as such. According to the definition of work-charged establishment, as given in clause (c) of Chapter I of the Hand Book for establishment Officer dealing with the work-charged staff in the Central P.W.D. they are on the footing of employees on monthly basis. If they are engaged for a specific work or works, their engagement lasts only for the period during which the work lasts. If dismissed, otherwise than for serious misconduct, before the completion of the work for which they were engaged, they are entitled to 14 days notice or 14 days pay in lieu of notice but otherwise, with or without notice their engagement terminates when the work ends, provided always that no members of the work-charged establishment who have been in continuous service, for not less than one year shall be retrenched except in accordance with the conditions laid down in section 25 (f) of the Industrial Disputes Act. Therefore, from this it follows that a work-charged employee is not a regular employee and under such circumstances he is not governed under the Central Civil Services Rules and the Fundamental Rules. Under Chapter IV, Part 2, Rule 4.201 of the Central P.W.D. Manual, Volume I, it has been mentioned that the appointment of work-charged establishment is subject to the condition that a definite provision exists for the entertainment in the estimates to which pay of such establishment is proposed to be charged. In the case of original works, work-charged establishment will be met out of contingencies of the project. In the case of maintenance works, they would be engaged against the specific provision for the entertainment of work-charged establishment, in the sanctioned estimate. This will also show that a work-charged employee is not a regular employee. Similarly under Chapter I, Part K, Rule 1.132 of the Public Works Department Code it has been mentioned that a work-charged employee is not entitled to any pension, leave or travelling or other allowance except mentioned thereunder. Under Rule 3.21 of Chapter III under the heading "establishment of the Manual of Orders of the Public Works Department, Buildings and Roads Branch, Punjab", powers have been given to various officers of the P.W.D. to sanction entertainment of establishment on work-charged basis and the time-scales of pay of different classes of work-charged establishment are sanctioned or revised by the Chief Engineer from time to time with the concurrence of the Finance Department. Therefore, from the above it is quite manifest that the work-charged persons are not regular employees even though the sanction is given by the Chief Engineer for the creation for their posts.

It has been stated by Shri B. K. Mukerjee (R.W. 8) who is Superintending Engineer (Administration) in the Beas-Sutlej Link, Project at Sundernagar that they employ people on work-charge basis and that the services of a work-charge employee are terminable by one month's notice on either side or one month's pay in lieu thereof. He has admitted that the Board has its own budget and the payments to all the employees of the Board are made out of the budget of the Board. Regarding the work-charged employees there are Standing Orders for their day-to-day conditions of Service. Standing

Orders are framed by the project authorities under the Industrial Employment Act. He has also stated that the work-charged employees of the B.S.L. Project are officially authorised to participate in the political activities.

Shri Rajeshwar Nath (P.W. 6), Accounts Clerk in the Beas-Sutlej Link Project, Sundernagar, has produced the Standing Order in respect of the service conditions of the factory staff and according to him these rules are applicable to the charge-men and the work-charge staff of the factory. He also says that the funds are sanctioned by the Board and that Shri Abhilashi is also governed by the rules contained in Ex. P.W. 3/D and he is not entitled to any pension. These rules are made by the Board and are approved by the Industrial Tribunal before they are enforced.

According to *The Gandak Yojana Karmachari Kalyan Sangh and another vs. State of Bihar and others* (1970 Labour Industrial Cases 1582) all the persons employed by Government are not Government servants in technical sense. The persons employed on daily basis are workers who get their daily wages in accordance with the Minimum Wages Act. Similar is the position of the employees of the work-charged establishment. The pay and allowances of work-charged staff are charged against a particular work on which they are employed by making provisions of the same in the estimate of the work concerned as laid down in para 61 of the Public Works Department Code.

In the face of the above, it is quite manifest that Shri Abhilashi is not governed under the Central Civil Services Rules and the Fundamental Rules. He is governed under the services conditions of the factory staff which are incorporated in Exhibit P.W. 6/D and which rules are made by the Board and have been approved by the Industrial Tribunal. He is not entitled to any pension, he is employed only for a specific work and does not fall within the definition of a regular employee. He, therefore, cannot be said to be a person holding any office. Moreover, it is not necessary to determine his status whether he is holding an office of profit once it has been determined that the Board is an independent and autonomous body with power to employ its own staff for the efficient discharge of its functions. The employees are paid from its own funds and the Board has got funds of its own. Therefore, it is not necessary to get into the other arguments advanced by the learned counsel for the parties on the points as to what is a civil post and what is an office of profit under the Central Government. Therefore, I come to the conclusion that the order passed by the Returning Officer rejecting the nomination paper of Shri Abhilashi to stand as a candidate for election to the Legislative Assembly was illegal and improper.

The second part of this issue is with regard to the rejection of the nomination paper of Shri Prem Singh. According to the pleadings it is contended that the provisions of section 9A of the Act are not attracted at all and it is not a subsisting contract under section 9A of the Act. The rejection order, therefore, is improper and wrong. The reply of the respondent was that Shri Prem Singh was a contractor for the Government of Himachal Pradesh for the execution of the forest works and for the sale of the trees. He was also holding contracts for the execution of various works of the Government and for sale of goods to Railways, Himachal Pradesh P.W.D., Commandant C.O.D. Cheeki, Allahabad (U.P.), General Manager, Ordinance Factory, Moradnagar, District Meerut (U.P.), Beas-Sutlej Link and other departments of Himachal Pradesh Government and he had got

Subsisting contracts on the date of scrutiny of nomination papers. The case is fully covered under section 9A of the Act and as such the nomination paper had rightly been rejected.

The rejection order is Exhibit P.W. 9/A. It appears that one of the deeds, which was put up before the Returning Officer by the parties opposing the validity of the nomination paper was Annexure P.G. relating to contract of lot No. 3/1971-72 for a sum of one lac and two thousand rupees and the same has now been exhibited in the Court as P.W. 9/G. It appears from the order of the Returning Officer that another deed relating to the sale of trees in Nachan Forest Division had also been put up before him and it was argued before the Returning Officer that these agreements were not leases but were contract for sale of trees. But the submission of Shri Prem Singh did not find favour with the Returning Officer and he rejected his nomination paper. Now in this court the respondent besides the deeds put up before the Returning Officer has also by his amended written statement alleged that Shri Prem Singh whose nomination paper had been rejected held several other contracts with the Government and which contracts had not been completed and were subsisting not only on the date of the filing of the nomination paper but even thereafter.

Section 9A of the Act which provides for disqualifications of a person for election to the Parliament or the State Legislature reads as under:—

"A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government."

Now I will take up the forest contracts which are Exhibits P.W. 9/F, R.W. 9/G, R.W. 6/E, R.W. 6/A and R.W. 6/B.

Exhibit P.E. 9/F starts with the caption, "LEASE DEED INSTRUMENT OF LEASE OF FORESTS FOR PURPOSES OF FELLING OF MARKED TREES. THEIR CONVERSION AND EXTRACTION OF TIMBER" and this document further says "In pursuance of the provisions of the Indian Forest Act, 1927 and the rules made thereunder, this indenture made this 26th day of September, 1972 (One thousand, nine hundred and seventy-two) between the Governor of Himachal Pradesh through Secretary Forests to the Himachal Pradesh Government (hereinafter called the "Lessor") of the one part, and Messrs/Shri Prem Singh and Co. through proprietor Shri Prem Singh son of Shri Lal Singh, resident of Mandi, Tehsil Mandi, District Mandi (H.P.) (hereinafter called the "Lessee") of the other part", and then other details about the amount, etc. continue. At the end it would appear that this date when Shri Prem Singh is shown to have signed this document is 26-8-1971 and the Deputy Secretary (Forests) appears to have signed the document on behalf of the Governor of Himachal Pradesh on 26th September, 1972 as is the date given in the opening paragraph of this deed. There is a copy of the sanction order dated 15th March, 1971 issued from the Himachal Pradesh Secretariat under the signatures of the Deputy Secretary conveying the sanction of several lots including lot No. 4/71-73 for two lacs and twenty-five thousand rupees in favour of Messrs Prem Singh and Co. However, this document has not been proved. It appears that actually the trees under this deed were given to Shri Prem Singh after the sanction of the Government only on 26th September,

1972, when this deed was given to Shri Prem Singh after the sanction of the Government only on 26th September, 1972, when this deed was signed by the Deputy Secretary on behalf of the Governor of Himachal Pradesh. Therefore this deed can by no stretch of imagination be said to be a deed relating to any contract which was subsisting in February, 1972. Shri Prem Singh has gone in the witness box as R.W. 14. He has stated in cross-examination that all the various contracts in the name of Messrs Prem Singh and Bros. had been concluded prior to February, 1972. However, he has filed an affidavit dated 6-1-1973 in which he says that this contract as also the contract as mentioned in Exhibit P.W. 9/G are still subsisting but it would suffice to say that in so far as the former contract, i.e. P.W. 9/F is concerned the same was executed or granted to Shri Prem Singh only on the 26th September, 1972, that is, after the filing of the nomination paper. Therefore, the question that it is still subsisting is immaterial.

Exhibit P.W. 9/G is a contract in respect of lot No. 3/1971-72 for a value of one lac and two thousand rupees. The opening paragraph which provides for the date, etc. when this indenture is made is left blank. This deed appears to have been signed by Shri Prem Singh on 26th August, 1971. However, it has not been signed either by the Government or any body else on his behalf, neither any date is filled nor the witnesses have signed that portion which is meant for the lessor and the witnesses to testify to his signatures. They are left blank. There is no sanction order to show when this lease was sanctioned. From the statement of Shri Prem Singh also nothing can be deduced if the contract in respect of this lot was subsisting on the material date. But, as would appear from his evidence, all the contracts entered into with Prem Singh and Bros. had been completed before the 1st February, 1972. In so far as the affidavit which is appended with this document bearing the date 6th January, 1973, is concerned, the same has not been tendered in evidence so as to base reliance on the same. Consequently, it follows that there is no evidence that these two contracts, if at all they were contracts and not outright sales, were surviving on the material date or not.

Now I come to the deed, Exhibit R.W. 6/E. The title of this document says, "An agreement Deed for the sale of Trees" and it appears to have been executed on 14th January, 1967. The lessor appears to have signed the same on 4th September, 1969 and this date 4th September is also mentioned in the opening paragraph of the deed. But pertinent it is to note that it was a lease with Messrs Lal Singh and Hazari Lal. However, a deed, Exhibit R.W. 14/C, has been produced to show that Shri Prem Singh was also one of the partners of this firm Messrs Lal Singh Hazari Lal. This lease deed pertains to lot No. 4/1967-69 for four lacs and fifty thousand rupees, and felling of the trees and the removal of the same was to be concluded by 31st March, 1969. Shri P. N. Tikku (R.W. 6) who is the Divisional Forest Officer, Mandi simply identified the signatures of Shri P. K. Mattoo, Secretary (Forests) on the document and beyond that he did not say anything about the contract whether the same had been complete or it was still subsisting. The statement of Shri Bhagwan Singh Parmar also does not lead us any further, nor Shri Prem Singh has made any useful statement about the completion or its still surviving on the material date.

Next I come to the document Exhibit R.W. 6/A, which is styled as "Agreement Deed for Sale of Trees". It does not bear any date, etc. in the opening paragraph of this deed. It only mentions the name of Prem Singh and Co. the forest contractor as the purchaser. This

document appears to have been signed at the end by Shri Prem Singh on 20-9-1969. Whereas it purports to have been signed by the Conservator of Forests on 13-9-1970 and the witnesses have signed it on 21-9-1970. It pertains to the sale of trees in lot No. 9/69-71 Nachan Forest Division, Bilaspur sold for seventy three thousand and one hundred rupees as the Annexure B thereto mentions. Shri Prem Singh admitted in the cross-examination that the part of the contract covered by Exhibit R.W. 6/A was from the year 1969 to 1971. However, he stated that the work period was extended from time to time and that even now it was continuing. But he was not in a position to place any extension order nor have the other forest officers been able to produce any extension order to testify to the fact of this alleged extension of time for the completion of the contract covered by Exhibit R.W. 6/A. Shri Prem Singh has stated that all his papers had been burnt in a fire in his village Dubhar, which is two miles outside Mandi town, where he has got a hotel building known as "Lal Hotel". It is admitted by him that the entire correspondence about his leases, etc. is done on the address at the said place, i.e. "Lal Hotel". But it is not understood why he has taken all his papers to his village where, according to him, they were burnt in a fire that broke out about 6 or 7 months before. In this agreement there is no clause for any extension granted to him for the completion of felling of the trees. However, it has been specified that the payment is to be made in the form of instalments. If any extension had actually been granted then either R.W. 6, R.W. 7, R.W. 11 and R.W. 12 should have come forth with some order from their office about any extension being granted for the completion of the work or Shri Prem Singh should have produced a copy thereof. For their failure to produce any such correspondence I must hold that no such extension was granted and the felling of the trees had been completed before the relevant date.

The further agreement is Exhibit R.W. 6/B. Its title is also "Agreement deed for Sale of Trees", and the portion which reads as, "This indenture made this date, etc." is blank. This is a sale of trees in lot No. 5/70-71 in Mandi Forest Division, Mandi sold to Shri Prem Singh for sixty thousand rupees. This deed appears to have been signed by Shri Prem Singh on 23-1-1970 and it purports to have been signed by the Conservator of Forests on 24-8-1970. Vide clause 14 of the agreement it is provided that the time is the essence of the agreement and the purchaser shall complete the felling of the trees and the removal of the trees obtained therefrom outside the leased forest by the 31st of March, 1971. However, there is a clause 14 (a) which gives powers to the Lt. Governor grant extension of the period of working of any particular lot on the conditions mentioned therein. About the extension of any period for the completion of the work under the agreement Exhibit R.W. 6/B also he made the same reply as made in respect of the felling agreement Exhibit R.W. 6/A. Therefore, there is no evidence on the record to establish the fact that the contractor had not completed the contract within the stipulated period or that any extension was granted to him in respect of these contracts. Oral evidence in the absence of any documentary evidence, which should have been there, is not of any avail. Moreover, the testimony of Shri Prem Singh does not inspire confidence.

Now the further question is whether these five deeds relate to sale of trees outright or they are lease deeds for execution of works. A lease of immovable Property as defined under section 105 of the Transfer of property Act is a transfer of right to enjoy such a Property made for a certain sum expressed or implied, or in perpetuity,

in consideration of the price paid or promised, or of money, a share of crops, service or any other thing of value to be rendered periodically or on specific occasions to the transferee by the transferee, who accepts the transfer on such terms. Therefore, from this definition it is quite apparent that the sale of the trees for a specific sum, to be cut and removed within a specified period is not a lease as defined under the Transfer of Property Act, rather, it is a sale of trees outright as it is not an immovable property as contemplated by section 3 of the T.P. Act. It says that immovable property does not include standing timber, growing crops or grass. The T.P. Act has also defined the phrase "attached to the earth" which means things rooted in the earth, such as trees, although trees and shrubs are immovable property according to the definition in the General Clauses Act but this definition is subject to the explanation made in the T.P. Act as to standing timber. Consequently, it is also clear that a permit or this deed whereby Shri Prem Singh had been sold the trees was a permit to fell the trees within a stipulated period and from this it does not follow that the transferee was to enjoy the benefit of further growth and that he was allowed to fell or remove further trees as he liked from the area from which he was sold the trees which had been duly marked for a particular sum. Therefore, it was a sale of trees outright and it cannot be said to be a contract for supply of goods to the Government as contemplated by section 9A of the Act in order to entail disqualification by a candidate for election to the Assembly.

The scope of the expression 'Contract' for the supply of goods or for the execution of any work was considered in *Yugal Kishore Singha, vs. Nagendra Prasad Yadav* (A.I.R. 1964 Patna 543) where the candidate was a Permit holder to carry mail for the union of India, it was held:

"A contract embodied in a permit to ply a bus by which a person only undertakes the transport of postal articles and mail bags cannot be said to be a contract for the supply of goods. The expression "supply of goods" implies furnishing something that is wanted and hence when a carrier is asked to collect and transport postal articles and mail bags from one place and to deliver them to persons entitled to receive them, the carrier is not fulfilling any want of the sender or the receiver in respect of the goods collected, carried and delivered; in such a case the supply of goods, if at all any, may be by the sender to the receiver but certainly not by the transport agency. Further such a contract is not even a contract in execution of any works undertaken by the Government concerned as contemplated by S. 7 (d). The use of the plural word 'works' indicates that what is contemplated by the section is the carrying out of something to be built or constructed and not merely something to be done, which a contract of transport of postal articles and mail bags undoubtedly is."

Similar was the view taken in *Brahma Dutt vs. Paripurna Nand* (A.I.R. 1972 Allahabad 340).

From the aforesaid discussion, therefore, what follows is that the agreements were not leases, rather they were contracts for sale outright. In so far as Exhibits P.W. 9/F and P.W. 9/G are concerned they are not even contracts of sale as they have not been proved to be duly executed nor is there any evidence whether they were subsisting on the material date. In so far as Exhibits R.W. 6/A and R.W. 6/B are concerned there is also no evidence whether they have been completed or not and they also pertain to

a period before the elections or for the matter of that before the date of filing the nomination paper. There is no proof of their either subsisting or their completion. However, there is some evidence to the effect, as is found in the statement of Shri P. N. Tikku (R.W. 6) that there is an outstanding balance against Shri Prem Singh of an amount of Rs. 13,640 as struck in the month of September, 1972, with regard to the lot covered by this agreement. If it is an outright sale than there was no impediment in the way of Shri Prem Singh for standing as a candidate because the sale was complete on the day it was made and the property in the goods had passed to the buyer. The dues on account of the price of the trees, if any, was a civil liability which could be enforced by way of a suit and it could not be said that the contract was still subsisting in as much as Shri Prem Singh failed to make payment of a part of the price. This conclusion of mine further gets fortified from the very terms of the agreement that it is an outright sale and not a lease. Para 2 of the agreement reads as:

"The seller in consideration of a sum of Rs. 60,000 to be paid by the purchaser as hereinafter provided, hereby sells to the purchaser subject to the conditions hereinafter appearing, the trees marked as per details shown in Annexure "A" for felling, each tree being measured at breast height above the ground.

Para 3 of the agreement reads as:

"That the purchaser agrees that any tree subsequently marked for felling during the progress of his work and in the forest or compartment in which he is working will be taken over and paid for at the following rates."

Then the different kinds of trees and the rates at which they are to be paid for are given.

Para 4 states:

"That the purchaser agrees to accept the measurement, classification and calculations of the Divisional Forest Officer, Mandi Forest Division, in regard to the aforesaid trees and in regard to the trees which may be damaged by the purchaser or his labour during the course of felling operations."

And then it states as to how the volume will be calculated.

Para 2 (a) states:

"That the purchaser or his authorised agent must take possession of the sold trees under proper receipt of the Forest Officer or his representative."

Then the mode of payment is mentioned in para 7 and the last instalment was payable on the 1st March, 1971, or the date of expiry whichever was earlier. Therefore, a bare reading of these provisions would leave no manner of doubt that it was a sale of trees for a specific amount of Rs. 60,000 which amount, however, was payable in the form of instalments, the last instalment being payable on the 1st March, 1971. It would, therefore, appear that the ownership of the goods passed the day this deal was struck and it is immaterial that the full payment of the sale price has not been made and some amount is still outstanding against Shri Prem Singh and for this, as already stated, a civil liability could be enforced by a suit, but in so far as the sale is concerned the same is complete.

Learned counsel for the petitioner has argued that if it may not be held to be sale outright and that it was a contract then in that case it was not a contract with

the appropriate Government. The agreements with regard to the sale of trees had been executed by the Conservator of Forests on behalf of the President, because Himachal Pradesh before the 25th January, 1971 was a Union Territory. A contract executed in favour of the President or the Central Govt., which governed the Union Territory, could not be said to be executed with the Himachal Pradesh Government. On the other hand the learned counsel for the respondent contends that under section 37 of the State of Himachal Pradesh Act, 1970, all the liabilities, rights and obligation arising out of any contract and relating to the Central Government, in connection with the Governance of the Union Territory of Himachal Pradesh would be the rights, liabilities and obligations of the State of Himachal Pradesh and that these contracts, therefore would be the contracts entered into with the State of Himachal Pradesh. But this argument of the learned counsel does not appear to be tenable in as much as this section only talks about the devolution of the rights and liabilities of the Central Government. It cannot be construed that these contracts made with the Central Government before the 25th January, 1971, will be the contracts with the Himachal Pradesh Government. It is only an assignment of the rights and the liabilities under section 37 and not that Himachal Pradesh has thereby become a party to the agreements. It is a different thing that the Himachal Pradesh Government can sue or be sued on the basis of the devolution of the interest as contemplated under section 37 of the aforesaid Act. Learned counsel for the petitioner has cited a case being Election petition No. 11/1972. *Daulat Ram Sankhyani vs. Kuldip Singh*, decided on 20-11-1973, where in a similar situation it had been held that the contract would nonetheless remain an executed with the Central Govt. although its rights, liabilities and obligations would devolve under section 37 upon the State of Himachal Pradesh. The learned Judge, who decided this election petition for purposes of analogy noticed provisions of different Acts to show that if it had been the intention of the legislature that the contracts entered into by the Union of India on behalf of the Union Territory of Himachal Pradesh shall be deemed to have been made on behalf of the State of Himachal Pradesh then there should have been a clear provision in that behalf as in these cases. In section 59 of the Punjab Reorganisation Act, 1966 also there existed a provision which clearly laid down that the contracts would be deemed to have been made by the successor Government. section 58 (1) of the Punjab Reorganisation Act, 1966 reads as:

"59(1) Where before the appointed day the existing State of Punjab has made any contract in the exercise of its executive power for any purposes of the State, that contract shall be deemed to have been made in the exercise of the executive power."

Therefore, this section 59 (1) of the Punjab Reorganisation Act gives a specific power with regard to the contracts, etc. in the sense that they shall be deemed to be the contracts done in the exercise of the executive power of the successor State, whereas there is no such thing in section 37 of the State of Himachal Pradesh Act, 1970 so as to say that the Himachal Pradesh Government has become a party to the contract. As such, it cannot be said that these aforementioned contracts were executed in the exercise of the executive power of the State of Himachal Pradesh or for the matter of that with the appropriate Government.

Further, support can be derived from *Inayatullah Khan vs. Diwanchand Mahajan and others* (A.I.R. 1959 Madhya Pradesh 58). This also related to an election petition

in which the interpretation of the expression "appropriate Government" fell to be considered and it was held that by a fiction under section 101 of the States Reorganisation Act 1956 the contract of one Government became the contract of the successor Government and as such the said contract could be deemed to have been executed with the appropriate Govt. The contract was novated statutorily to substitute for the previous State and novation came to be statutorily engrafted upon the contract which stood in the name of the successor Government. This was so held because of the specific provision in the Act. But there is no such specific provision in the State of Himachal Pradesh Act, 1970. Consequently, these forest contracts cannot be said to be the contracts which had been entered into between the State of Himachal Pradesh and Shri Prem Singh. If the contract was not one entered into between the State of Himachal Pradesh on the one hand and Shri Prem Singh on the other, then there is no question of incurring any disqualification, as envisaged under section 9A of the Act.

Now I take up the other contract for the supply of timber by Shri Prem Singh to the Railways. Basti Ram (R.W. 1) produced the document, Exhibits R.W. 1/1 R.W. 1/2 and R.W. 1/3. Exhibit R.W. 1/2 is a copy of the minutes of the meeting held at Simla from 2nd to 4th April, 1970 to discuss the supply of wooden sleepers to the Indian Railways from Himachal Pradesh for the sleeper year 1970-71 and 1971-72. These minutes have been proved by Shri Bhagwan Singh (R.W. 11) who attended the meeting as a representative of the forest department from Himachal Pradesh. He deposed that the supply of timber was to be made to the Railways in accordance with the decision taken in that meeting. The supplies were to be secured by the forest department through any source and the Railways, were to deal with the Forest department only. The Forest department, according to him, had procured the sleepers from their contractors. The Forest department gives orders for supply and the payment to the contractors is also made by the Forest department. So, it means that there is no direct deal between the Railways on the one hand and the contractor on the other hand. It would, therefore, follow that the contractor was not a party to this meeting. It is also further clear that it was not decided that the supply of the timber was to be made by a particular contractor, rather the Forest department was responsible for supply of the timber to the Railways by placing orders with its contractors, which means it could procure the supply of timber from either one or several of the contractor as it liked and the Railways had no concern with the contractors. From item No. 11 of these minutes it appears that 1481 Nos. of D.G. rejected sleepers of Beas Dam Project were till lying at Dhilwan Depot and had not till then been removed by the parties. The Chief Conservator of Forests was requested to arrange for their removal as these had been lying there from about 1966-67 and in spite of repeated requests no action had been taken till then. Exhibit R.W. 1/3 is a cycle styled copy of the conditions of supply of sleepers from 1-11-1970 to 31-10-1972 from Himachal Pradesh Forest Department to the Northern Railways. So, this was also not an item of agreement between Prem Singh and the Forest department, rather it was a general conditions to be incorporated in the agreement deed and the conditions of supply as laid down in Exhibit R.W. 1/3 are as under:

1. The Himachal Pradesh Forest Department will control the price, supply passing and distribution of railway sleepers from Government forests, if any, in Himachal Pradesh.
2. A clause will be inserted in the agreement deeds

of Forest contractors that:

- (i) they must supply the number of sleepers allotted to each coupe at the announced prices; and
- (ii) they will not be permitted to sell railway sleepers except through the Forest Department.
3. All arrangements for supply will be in accordance with these conditions only and will be between the Himachal Pradesh Forest Department and the Northern Railway.
4. The Himachal Pradesh Forest Department will not sign any formal agreement deed with the Railways for the supply of these sleepers.
5. The specifications laid down in the publications 'Wooden Sleepers' issued by the Railway Board in April, 1959, will be followed for the inspection of sleepers and modifications that may be made in the specifications by the Railway Board, from time to time, will be binding on the Himachal Pradesh Forest Department.

To ensure that Kail Sleepers are not affected with red rot (*Trametes pini*) the ends of all sleepers will be freshly cut at the time of inspection and splashed with water.

6. The 'no claim' limit to sleepers passed below the standard and noticed at Dhilwan will be 2% for the quantity included in each Inspection Note. The Railways, will, however, intimate such rejections beyond 2% within one month from the date of receipt of the last consignment of sleepers (in respect of the said inspection note) at the treatment plant. These rejections will be dealt with in accordance with the clause regarding inspection, para 15.
7. Any unsupplied balance of the previous year's supplies will lapse on 31st of October, following.
8. The responsibility of the Forest Department except as laid down in these proceedings, will cease after despatch of the sleepers.
9. The number of sleepers to be supplied is not guaranteed and there will be no penalty for short supply, but every effort will be made by the Forest Department to supply the full quantities.
10. The prices of sleepers will be as fixed by the Sub-committee appointed by the Central Board of Forestry."

Thus it would be apparent that the condition was to be incorporated in the agreement of the forest leases who was required to supply the timber to the Railways. Shri Prem Singh made an offer vide letter, dated 21-12-1970 (Exhibit R.W. 11/B), to supply 600 Deodar and 200 Kail trees from Jhiri depot and the letter is addressed to the Conservator of Forests. The Conservator of Forests by his letter of the same date (Exhibit R.W. 11/C) accepted the offer subject to the conditions mentioned thereunder. He was required to offer the timber for passing to D.F.O. Timber Passing Bilaspur at a place to be approved by him, and then the timber would be despatched F.O.R. Rail Head for Railway sleepers. The passing was required to be carried out as per IS-190-1960 specifications for Beas Link, and for passing railway sleepers, specifications given in the publication "Wooden Sleepers" were to be followed. The department reserved the right to cancel/reduce the allotment at any time without assigning any reasons. The supplier was to accept the decision about final rejection and thereafter take responsibility to remove/replace the rejected sleepers and to pay the value etc. of the rejected sleepers to the

Forest Department. The supply under these conditions was required to be completed on or before 15th January, 1971. Exhibit R.W. 11/D is an inspection note whereby out of lot No. and division No. 4/67-69 in Jhiri 600 Deodar sleepers had been passed and, 590 Chir trees were passed. But, it may be mentioned that this passing note does not refer to the supply to be made by Shri Prem Singh. It refers to the supply of timber made by Messrs Lal Singh Hazari Lal from lot No. 4/67-69. However, from the acceptance letter, Exhibit R.W. 11/C, it would appear that the acceptance was with regard to 600 BG sleepers of Deodar and 200 sleepers of Kail trees of I grade. Therefore, this is not a relevant document to prove how much quantity of sleepers was passed for supply according to the acceptance letter. According to this inspection note there is no Kail wood, it is only the Chir and 600 Deodar trees that have been passed.

How we have to see whether there is an agreement made by Shri Prem Singh for the purchase of trees after the date of acceptance of his letter for supply of sleepers to the Railways. The offer was accepted on 21-12-1970, the decisions in the meeting of the Railways were taken on 4-4-1970 and conditions Exhibit R.W. 11/3 were written thereafter and according to condition No. 2, a clause was to be inserted in the agreement deed that they must supply the number of sleepers allotted to each coupe at the announced price and they will not be permitted to sell railway sleepers except through the Forest Department and all arrangements for supply will be in accordance with these conditions only and will be between the Himachal Pradesh Forest Department and the Northern Railway. The agreements, as already detailed above, are Exhibits P.W. 9/F, P.W. 9/G, R.W. 6/E, R.W. 6/A and R.W. 6/B. In so far as agreements Exhibits P.W. 9/F and P.W. 9/G are concerned there is no such clause inserted in these two agreements. Therefore, the question of supply of timber to the Railways in the year 1970-71 does not arise. In agreements, Exhibit R.W. 6/E, there were clauses 39A, 39B, 39C and 39C for supply of timber to the Railways but it appears that those clauses have been scored out. Only the clause with regard to the rates for sleepers to be supplied to the Railways, has been left intact. This agreement or the sale deed pertains to the year 1967 and in fact there was no order for supply of the sleepers to Shri Prem Singh on that date. Therefore, this is also not a relevant document for that purpose. Exhibit R.W. 6/A which is a sale deed for trees signed on 20-9-1969 by the purchaser also shows that there were clauses 39A, 39B, and 39C and 39C about the supply of timber to the Railways but they have all been scored out. Only the clause about the rates has been retained. This is also a document which precedes the date when the offer was accepted. Exhibit R.W. 6/B, however, retains the clause 38 about the supply of sleepers to the Railways and his deed also, as would be apparent, relates to a period before this offer for supply of timber was accepted on 21-12-1970. This deed has been signed by the Conservator of Forests on 26-8-1970 and by the purchaser on 23-1-1970. So, this acceptance of the offer is not in accordance with the agreement. However, it can be said that it is a separate contract for supply of timber. But in so far as Exhibit R.W. 11/D is concerned the same does not relate to the supply of timber as mentioned in the acceptance letter, Exhibit R.W. 11/C. This letter, Exhibit R.W. 11/D, vide condition No. 6, says that the supply will be completed on or before 15th January, 1971 failing which the department may cancel the allotment and extend period of supply. There is no letter from the Forest Department to indicate that the contractor had not supplied the requisite number of sleepers to the Railways, as per his offer, Exhibit

R.W. 11/B, and the acceptance letter, Exhibit R.W. 11/C. However, there is a letter, dated 21-1-1972, Annexure R.W. 7/C, from the Timber passing Officer, Bilaspur to Messrs Prem Singh and Co., Lal Bhawan, Mandi, which refers to an earlier letter No. 2122, dated 18-12-1971. By this letter, Shri Prem Singh has been advised to remove the rejected sleepers lying at Dhilwan Depot in his own interest to avoid deterioration. It has further been stated therein that he should note once for all that the disputed timber is lying at his risk at Dhilwan. In case of his not arranging its removal or disposal the Government will not be responsible. A copy of this has been endorsed to the Superintendent, creosoting Plant, N. Railway, Dhilwan, with reference to his memorandum, dated 11-1-1972. It has also been mentioned in the memorandum that all possible efforts have been done by advising the party to remove the rejected timber at once. The reply from the party is still awaited which will be communicated on receipt from them. The earlier letter, dated 18-12-1971 to which reference has been made in Exhibit R.W. 7/C is Exhibit R.W. 7/D and it is in the form of a reminder advising M/s Prem Singh & Co. to remove 28 plus 13 sleepers lying at Dhilwan Depot. In these letters it is not stated that the contractor was required to replace the rejected timber. He was simply asked to remove the rejected timber and there was nothing more than this. The term of the agreement, as already indicated above also states that the supplier shall accept the decision about final rejection and thereafter take responsibility to remove/replace the rejected sleepers and to pay the value, etc. of the rejected sleepers to the Forest Department. So, there is nothing about replacement and he has again and again been asked to remove the rejected timber. Therefore, it cannot be said that the contract for supply of the timber still subsists with the Forest Department for supply to the Railways because from these two letters he is not required to replace the timber or to pay the value, which means that the Forest Department had put an end to the contract. Then there is a letter, dated 30-7-1972 (Exhibit R.W. 11/C). It is a typed letter, the date at the top and at the bottom is in ink and there is figure 2122 after letter No. and the date 18-12-71 and a word 'the' in the third line in ink and they are owed to have been written by Shri Prem Singh, but there are no signatures of Shri Prem Singh on this letter. He has also stated after seeing this letter that he did not remember to have written any letter to the Timber Passing Officer or to the Conservator of Forests from 18-12-71 to 31-7-1972. The admissibility of this letter was objected to by the learned counsel for the petitioner on the ground that it was not relied upon. This document undoubtedly is spurious and can be the result of manipulation because this document came into existence only after the election petition had been filed and it refers to a letter, dated 18-12-1971. The reply is quite belated. By this letter Shri Prem Singh is shown to have expressed his willingness to replace the rejected sleepers by other sleepers as per specifications of the Railways. No other possible reason can be attributed except that it was manipulated and manufactured merely for the purpose of a defence by colluding with the Forest Officers and by taking the witness into confidence. Otherwise, there was no need for Shri Prem Singh to have replied. After eight months, especially when he was not required to replace the rejected timber. He was only required to remove the rejected timber as the same was lying at his own risk and the Government was not responsible for the deterioration or any loss, etc. So, this letter cannot be read in the evidence. A letter, dated 8-12-1972, copy of which is Exhibit R.W. 7/H has also been placed on record in continuation of the letter No. 1408, dated 6-11-1972, i.e. after Shri Prem Singh

had offered to replace the rejected timber on 30-7-1972 and he was asked to arrange for inspection/passing for the replacement for which he stood in writing to the Timber Passing Officer, failing which he was informed that there will be no alternative but to suggest to the higher authorities to recover the price of the finally rejected and wrong species timber supplied by him from the 10% bill thereof and his other dues with Circle office. This will also show that the contract had come to an end or it was not alive on the 7th February, 1972, when Shri Prem Singh filed his nomination paper because he had been informed to remove the rejected timber and there was no demand for replacement of the rejected timber and that was the end of the contract and it revived only on a letter purported to have been written by Shri Prem Singh on 30-7-1972 long after the elections and after the institution of the election petition. This letter further shows that the authorities shall have to be moved to recover the price of the finally rejected and wrong species timber supplied and, therefore, the contract had been discharged by abandonment by the contractor. There is another letter, dated 28-8-1972, Exhibit R.W. 7/I written by the Conservator of Forests to the Superintendent, Creosoting Plant, Dhilwan, informing him about the application of Shri Prem Singh to replace the rejected scants by supplying fresh timber. But, there is no letter from the Railways to the Forest Department agreeing to accept the replacement of the rejected timber by fresh supply. So, these letters appear to be manipulated and they had not been relied upon by the respondent and the question of producing these documents came up just at the eleventh hour and the learned counsel for the petitioner was right in raising objection with regard to their admissibility on the ground that they were not relied upon.

Further, it would appear that Shri Prem Singh did not supply the timber, as would be apparent from the letter, dated 8-12-1972 (Exhibit R.W. 7/H) when he was asked by the Divisional Forest Officer that in case of his not replacing the rejected timber the authority shall be moved for making recovery of the price of the finally rejected timber. So, this letter of 30-7-1972 (Exhibit R.W. 14/D) is nothing but a spurious one.

Learned counsel for the respondent has contended on the basis of *Satyendra Kumar and another vs. Chairman of the Municipal Commissioners of Dacca and others* (A.I.R. 1931 Calcutta 288) that since the payment for the rejected timber had been withheld, that would necessary show that Shri Prem Singh did not perform his part of the contract and that he still had an interest in the contract and as such he was disqualified from contesting election. But this authority has got no application. The contract had come to an end when Shri Prem Singh had been informed by the Forest Department about the rejection of the timber and he had been asked to remove the same without any further direction to replace the quantity so rejected. Thereafter the contract did not survive and the payment, if withheld by the Forest Department, is not a part of the contract, whereby Shri Prem Singh could be said to have incurred disqualification. The contract had been put to an end by the Forest Department itself by not calling upon him to replace the rejected timber and if the payment remain to be made to him that is covered by the explanation to section 9A of the Act.

Learned counsel for the respondent contends that the contract is still subsisting because Shri Prem Singh did not comply with the requirement of clause 5 of the agreement, Exhibit R.W. 11/C, inasmuch as he did not replace the rejected timber. He has referred me to

Chatturbhuj Vithaldas Jasani vs. Moreshwar Parashram and others (A.I.R. 1954 S.C. 236) which says:

"When a contract consists of a number of terms and conditions, each condition does not form a separate contract but is an item in the one contract of which it is a part. The consideration for each condition in a case like this is the consideration for the contract taken as a whole. It is not split up into several considerations apportioned between each term separately."

He says that even if one of the conditions of this letter of acceptance, Exhibit R.W. 11/G is not complied with, then the whole contract shall be deemed to be subsisting. Whatever may be the thing, the fact remains that there was no subsisting contract, as already said, because there was no demand and the willingness was expressed by Shri Prem Singh only on 30-7-1972 to replace the rejected timber and even thereafter he did not replace the same, as would be evident from the letter of 8-12-1972. The Railways also did not make any demand from the Forest Department to have the rejected timber replaced. The only direction given by either the Railways or the Forest Department was that the contractor should remove the rejected timber which was lying at Dhilwan Depot at his own risk and that the Government shall not be responsible for the deterioration of the same. Therefore the contract was rescinded by the Forest Department itself by not demanding the replacement of the rejected sleepers. Therefore, in such circumstances this contract cannot be said to be subsisting nor the letter which is attributed to Shri Prem Singh is a letter signed by him. He does not own this letter, except that the ink writings are in his hand. It is, therefore, a spurious letter, as already stated and as such this authority will have no application to the facts of the present case.

In *Konappa Rudrappa Nancouda vs. Vishwanath Reddy and another* (A.I.R. 1969 S.C. 447) there was an agreement by a partnership firm with Government to construct road and buildings and the contractor had also agreed to repair for stipulated period all defective parts in execution of contract and he failed to complete certain items and it was held that the contract was subsisting and partner of firm was disqualified to contest. This case is also distinguishable. In the present case the contractor had supplied full quantity but out of that a few sleepers had been rejected and under the terms of the agreement, Exhibit R.W. 11/C he was required to either remove or replace the rejected sleepers, but he was asked only to remove the timber by the letters issued by the department more than once. Therefore, the department itself had rescinded the contract and there was no question that the contract still subsisted. If at a later stage the contractor expressed his willingness to replace the scants that does not revive the contract nor that letter has been proved to have been signed by Shri Prem Singh as would appear from the attendant circumstances. He did not supply the timber even thereafter, as would be apparent from the letter of 8th December, 1972. So that means that there was no intention on the part of Shri Prem Singh to replace the rejected timber as the contract has come to an end.

The further authority relied upon is *N. K. Ramiar and Bros. vs. S. S. Ramudu Ayyar and another* (A.I.R. 1933 Madras 176). It was held in this case:

"The question whether a contract to supply goods in instalments is an indivisible one and whether a repudiation of one instalment by a buyer is

a repudiation of the whole so as to absolve the seller from obligation to tender the remaining instalments is a matter of fact in each case. Where³ in such a contract the buyer repudiates the whole contract by refusing to take delivery of one instalment, but the seller without accepting the repudiation elects to keep alive the contract, he must be deemed to have treated the contract as divisible and he is not absolved from the obligation of tendering the remaining instalments.

This authority also, in my opinion, will not be applicable to the facts of the present case. The contract stood rescinded as soon as 41 sleepers were rejected out of the total number of sleepers, which Shri Prem Singh was required to supply to the Railway through the Forest Department. There was no demand that he must replace the supply of the rejected timber because the term in the contract on which great emphasis is laid by the learned counsel for the respondent is clause 5 of Exhibit R.W. 11/C and it says that the contractor shall accept the decision about final rejection and thereafter take responsibility to remove/replace the rejected sleepers and to pay the value, etc. of the rejected sleepers to the Forest Department. The contractor was required only to remove the rejected sleepers and not to have the rejected timber replaced. Shri Prem Singh of his own accord is stated to have written the letter Exhibit R.W. 14/D, which letter has not strictly been proved to be a letter written by Shri Prem Singh because it does not bear his signatures. So, when the contract had been rescinded by the authority of the Forest Department under clause 5, whose decision about the rejection and thereafter to take the responsibility to remove, etc. was final, there was no question about keeping alive the contract by making an offer by the contractor much after a long time which cannot be said to be a reasonable time. According to clause 6 of the term of contract, Exhibit R.W. 11/C, the contract was to be completed by the 15th January, 1971, failing which the department had the authority to cancel that allotment and extend period of supply. But, it is noteworthy that the department did not extend the period for supply of timber because no such document has been placed on record. So, for failure of Shri Prem Singh to complete or perform the part of his contract the department shall be implied to have cancelled the contract, inasmuch as it did not make any demand in terms of clause 5 to get replacement of the rejected timber.

Further reliance is placed on *Burn and Company Limited vs. His Highness Thakur Sahib Sree Lakhdiar of Morvi State* (A.I.R. 1925 P.C. 188), which says:

"When promisor fails to perform his part of the contract promisee can rescind the whole contract but if the promisee treats it as a subsisting contract, he must do his part fully to entitle him to insist on the promisor's carrying out of the contract."

This authority also will not assist the respondent in view of the circumstances as detailed out above.

The authority *Muhammad Habibullah vs. Bird and Company* (A.I.R. 1922 P.C. 178) also is not a relevant authority in view of the different facts of the present case, where there was no option given to the contractor to supply the sleepers at his own free will and at any time whenever he so desired rather he was enjoined to complete the contract by the 15th January, 1971, whereafter the option was given to the department to cancel the allot-

ment or to extend the period of supply. The department did not exercise the option to keep alive the contract inasmuch as it did not ask him to replace the rejected timber by fresh supply, rather it exercised the option to ask him to remove the rejected timber which was lying at Dhilwan at the risk of the contractor and, therefore, the contract stood cancelled by implication. In so far as the contractor was concerned there was no option to be exercised by him to keep alive the contract.

Learned counsel contends that the rejected timber has not been removed so far and this is also one of the terms of the contract for supply of goods. That is true. But there is nothing on the record to show if this timber is not removed by Shri Prem Singh. The first letter issued to Shri Prem Singh directing him to remove the timber is dated 18th December, 1971, and the second letter is dated 21st January, 1972 (Exhibit R.W. 7/C). Thereafter there is no letter which may indicate that the rejected timber had not so far been removed by Shri Prem Singh. Letter, Exhibit R.W. 7/H, in continuation of letter, dated 6-11-1972 (Exhibit R.W. 7/D) only refers to replacement and it does not mention that the timber had not been removed. Therefore, there is no evidence to show that the timber had not been removed by Shri Prem Singh before the 7th February 1972. Shri Prem Singh has not stated anything about the removal or otherwise of this timber. Therefore, it cannot be said that Shri Prem Singh has not performed the part of his contract wholly, if it may be considered to be one of the terms of the contract for the supply of goods.

Learned counsel has also referred me to Chapter XII of the Contract Act by Anson, to show as to what are the various modes to discharge the contracts. He has further emphasised that by breach of a condition, a contract cannot be said to have been discharged unless the injured party puts an end to the contract and reliance for that is placed on *State of Kerala vs. The Cochin Chemical Refineries Ltd.* (AIR 1968 S.C. 1361) which says:

"A transaction of mortgage formally executed does not become void or ineffective merely because the mortgagee fails to advance the amount of money undertaken to be advanced by him. If without advancing the amount agreed to be advanced, he sues on the title created under the deed of mortgage, the Court will not award him a decree for any thing more than what he has advanced. But that is not to say that the mortgage is invalid."

This case also has got no application to the facts inasmuch as I have already stated that the Forest Department had put an end to it by asking Shri Prem Singh to remove the rejected timber and thereby the contract had been discharged.

Badrishal Pillie vs. J. V. Narsingh Rao

(AIR 1959 A. P. 116) is also not applicable as it says that the contract is alive as long as the goods supplied are not paid for *H. R. Annamalia Mudaliar V. Devaraja Urs & others* (AIR 1968 Mysore 140) says:

"The existence of rights and obligations arising for determination under the terms and conditions of contract, discharged under the circumstances other than by performance viz. (a) by agreement or (b) by breach cannot be established without reference to the terms of the contract.

Hence such contract survives for the working out of ancillary matters relating to the rights and liabilities of the parties under the contract".

It further says:

"Even though the contract may be repudiated by one party and repudiation is accepted by the other, and there is a discharge of the contract by breach by the failure of one of the parties to perform his part of the contract the mutual claims between the parties require, to be determined under the terms of the contract which exists though for ancillary purposes, giving rise to the conflict between interest and duty and the disqualification under S. 9-A attaches to the person repudiating the contract, even if it is accepted by the State resulting in termination of the contract."

There can be no dispute with this authority. But may be stated that this authority will also not assist the respondent in view of the fact that the contracts in the present case has been rescinded by the Government by not asking him to replace the rejected timber. He was also not asked to pay the value of the rejected scants. However, the contractor has to be paid the price for the timber supplied by him.

In Abdul Rahiman Khan vs. Sadasiva Tripathi

(A.I.R. 1969 S. C. 302), it had been laid down:

"The explanation to S. 9-A contemplates a case where the contract has been fully performed by the Contractor but not by the Government. But where the contract has not been wholly performed or completed by the Contractor, unless the contractor shows that the contract had been determined by mutual consent, he cannot claim that there was no subsisting contract at the date of the filing of the nomination paper. Such a case does not fall within the explanation to S. 9-A."

There can be no dispute with the principle. But the facts of the case are distinguishable as already stated, that in terms of clause 5 the Forest Department whose decision was final was to reject or order the replacement or ask the Contractor to pay the value of the rejected timber. In the instant case, the Forest Department exercised the option of rejection of the timber without any thing more. The contractor was asked to remove the rejected timber and which, it appears, he had already removed before the material date as there is no evidence to show that on that date the timber was still lying unremoved. As such, the contract was no subsisting on the material date.

Lastly it may be stated that the contract in this case has been entered into before the attainment of Statehood by Himachal Pradesh and this contract for the supply of sleepers to the Railways, was, therefore, on behalf of the Government of India and it was not a contract with the appropriate Government, even if it may be said that it was subsisting on the material date although there is no evidence to that effect because the onus was on the respondent to have proved the same who had taken up these pleas in his amended written statement.

Now, I come to the supply of timber to the Execu-

tive Engineer, Division No. 2, P. W. D. at Bilaspur. Exhibit R. W. 12/A is a copy of the letter issues from the office of the Executive Engineer, Bilaspur Division No. 2 on 10-5-1971 to the Conservator of Forests for supply of timber. It was stated that they required 30 cubic meters of second class Deodar wood. The acceptance of this letter is Exhibit R. W. 7/J, written by the Conservator of Forests to the Executive Engineer, Bilaspur on the same date agreeing to supply the requisite quantity of timber and the Executive Engineer was asked to depute his representative to take delivery of the sleepers after the same had been passed by the Timber Passing Officer, Sundernagar, to whom instructions had been issued. The endorsements on this letter show that copies were sent to the Timber Passing Officer as also to Shri Prem Singh. The Timber Passing Officer was asked to supply 30 cubic meters of Deodar wood from the stock of Shri Prem Singh contractor. There is no proof that Shri Prem Singh agreed to make supply of the timber in pursuance of the letter Exhibit R. W. 7/J endorsed to him. However, he has in examination in chief stated to have agreed to supply 30 c. m. timber, but he could supply 25.751 c.m. timber only. He has stated in cross-examination that he did not remember if he received the original of Exhibit R. W. 7/J which is a letter written by the Conservator of Forests to the Executive Engineer with copies endorsed to the Timber Passing Officer as also to Shri Prem Singh for supply of timber. Then letter, Exhibit R. W. 11/G, dated 3-10-72 was shown to Shri Prem Singh. He has admitted the receipt of a copy of such letter but the same was not with him. The original has not been produced and it is only a copy of the letter. Shri Prem Singh simply says that he remembers to have received a letter with such contents. This letter along with other documents has been objected to by the learned counsel for the petitioner on the ground that it was not relied upon and it was produced at a much belated stage. Since this document does not inspire confidence, therefore, it cannot be said to have been proved and the objection of the learned counsel is upheld. It may also be stated that the order was placed by the P. W. D. to the Forest Department on 10-5-1971 and it was accepted by the Forest Department on the same day, with a copy endorsed to Shri Prem Singh. But apart from the bald statement of Shri Prem Singh, who has not stood the test of cross-examination, there is no other evidence to testify to the fact about the supply of the timber by him. In the absence of the best evidence this secondary evidence cannot be accepted as correct and the statement of Shri Prem Singh also cannot be held to be reliable. Further, after 10-5-1971 the Executive Engineer wrote a letter, copy of which is Exhibit R. W. 12/B, on 25th September, 1972, that is after about one year and four months inviting the attention of Conservator of Forests to his letter dated 10-5-1971 for supply of timber and the Conservator also wrote a letter on 3-10-1972 (Exhibit R. W. 11/G). As already stated the original had not been produced and this letter is also endorsed to Shri Prem Singh and there is no reference with regard to the previous correspondence about the supply of timber so as to say that Shri Prem Singh had undertaken to supply timber to the Forest Department for onward supply to the P. W. D. at Bilaspur. Therefore, in the first instance there is no proof about the contract for supply by Shri Prem Singh and secondly, the statement of Shri Prem Singh does not find support from any other evidence. The statement of Shri Prem Singh does not appear to be trust worthy. If there was any contract for supply the same must be deemed to have been abandoned by non-supply for such a long period.

Now I come to the second contract with regard to the supply of timber to the Executive Engineer, Manali. The document, Exhibit R.W. 14/A is a letter issued by Shri Prem Singh on 10-5-1971 to the Conservator of Forests, Bilaspur, for sanctioning the supply of Deodar trees of first grade to him for supply to the Executive Engineer, Manali. The Conservator of Forests by an order, Exhibit R.W. 7/A, of the same date informed the Timber Passing Officer that the Executive Engineer, B&R. H.P. P.W.D. Manali needed 300 Deodar sleepers for his use and that he should contact him and pass the above quantity of sleepers, from the stock of Shri Prem Singh contractor. A copy of this letter was endorsed to Shri Prem Singh for his information, which means that his offer was accepted. By an order, dated 24-5-1971, Exhibit R.W. 10/A, the Executive Engineer, Kulu, informed the Conservator of Forests that the requisite quality of wood was not available from the stock of Shri Prem Singh, and, therefore, he requested him to supply 300 cubic meters of sleepers of first and second grade in place of first grade and a copy of this letter was endorsed to the Executive Engineer. This means that the first contract for the supply of first grade Deodar for which the offer was accepted stood superseded or cancelled by this revised demand of the P.W.D. vide, Exhibit R.W. 10/A. The copy of this letter was not endorsed to Shri Prem Singh. Thereafter vide Exhibit R.W. 7/B the Timber Passing Officer passed 57 scants of the first grade out of 70 tendered and 174 scants of the second grade out of 200 tendered scants and the balance quantity was 5.887 of the first grade and 18.083 of the second grade and, this was done on 22-6-1971. It shows that the supply of 300 sleepers was not made. So to say 231 sleepers were supplied and 69 sleepers remained to be supplied although there was no letter of acceptance by Shri Prem Singh. But in view of the fact that he tendered the sleepers for passing that means he accepted the order for supply of the timber and he has also admitted this fact. Thereafter the Executive Engineer, Stores Division, H.P., P.W.D. Manali addressed a letter, Exhibit R.W. 9/A, to the Conservator of Forests for arranging the supply of remaining quantity of Deodar wood against the purchase order, dated 24-5-1972. This letter, in fact, does not relate to the supply of timber as requested vide letter, dated 24-5-1971. Thereafter, it appears, Shri Prem Singh wrote a letter, Exhibit R.W. 11/F, dated 9-8-1972, to the Conservator of Forests expressing his willingness to supply the remaining number of sleepers to the P.W.D. Kulu Division. However, there is no reference to the original supply order or to any demand order made by the department. On 23-8-1972 the Conservator of Forests asked the Executive Engineer by his memorandum with reference to his memo., dated 24-5-1972, whether they required the balance sleepers or not. Therefore, from this what follows is that the requisition order of the Assistant Engineer, Kulu, was dated 24-5-1972 and it did not make any mention of any earlier letter meaning thereby that earlier supply, if any, had been made by Shri Prem Singh. The balance supply if any was only with regard to the supply order, dated 24-5-1972, as is evident from letter, Exhibit R.W. 9/A coupled with Exhibit R.W. 7/L, and in so far as the offer of Shri Prem Singh, Exhibit R.W. 11/F, is concerned the same does not make any mention of any date or the order for supply of timber to the P.W.D. at Manali. Therefore, it means that it also refers to the latter contract of 24-5-1972. Consequently, it was a contract which was entered into by Shri Prem Singh for the supply of timber made only after the material date and, therefore, this contract is not relevant.

Now, I come to the contract of supply of timber to the

Rural Industrial training Centre, Bilaspur. Exhibit P.W. 11/K is admitted to have been written by Shri Prem Singh to the Conservator of Forests Bilaspur, expressing his willingness to replace the two rejected timbers out of those tendered by him for supply to the Rural Industrial Training Institute. In this letter he has stated that since he had no kail sleepers of the requisite specifications in his stock, therefore, he could not replace them. Now that he had got the timber of the requisite specification, he could replace the same. But there is no date on this letter and the seal which is put in the office of the Conservator of Forests on its receipt is dated 8-1-1973, which shows that the letter was written in January, 1973. Now we have to see when the order was placed. In fact the order was placed on 3-2-1970 just about a year prior to the attainment of Statehood by H.P. The letter was written by the Conservator of Forests to the Timber passing Officer informing him that some kail timber of the first and second grade was passed from the stock of Messrs Lal Singh Hazari Lal but the same was not lifted from there. Therefore, he was asked to arrange the delivery to the Rural Industrial Training Institute. It may be stated here that this related to the firm Messrs Lal Singh Hazari Lal, Forest Contractors, and not to Prem Singh and Co. Moreover, it was a contract with the Central Government having been executed before the attainment of the Statehood. Thereafter a letter dated 18-4-1970, Exhibit R.W. 5/A, appears to have been written by the Supdt., Rural Industrial Training Institute, Bilaspur, to the Conservator of Forests informing him that the timber supply was of inferior quality and that the same may be replaced. From this we cannot say to whom it referred R.W. 5, also betrayed ignorance as to whom the supply was made and who made the supply. It is only after two years and four months that Shri Prem Singh of his own accord came forward and offered vide Exhibit R.W. 11/K to replace the two rejected sleepers. Therefore, obviously what can be inferred is that this was all a manipulated game and the contract stood discharged by abandonment, it not having been performed within the reasonable period and there was no demand from the office. Therefore, on 7-2-1972, in my opinion the contract had been fully performed.

In view of the above discussion, I am of the opinion that the nomination papers of Sarvshri Abhilashi and Prem Singh had been wrongly rejected and the issue No. 1 and the additional issue are decided accordingly in favour of the petitioner against the respondent.

Summing up it may be stated that Shri Abhilashi was a work-charged employee. The B.C.B. is held to be an independent and autonomous body and a person working under such a body, therefore, does not incur any disqualification as contemplated under Article 191 (1) (a) of the Constitution of India. Further, Shri Prem Singh has not been found to be holding any contract subsisting on the relevant date, with the appropriate Government so as to incur disqualification under section 9-A of the Act. For the above, the nomination papers of the two persons were wrongly rejected. The election of the respondent cannot, therefore, stand and must be declared to be void under section 100 (1) (c) of the Act and I accordingly accept the election petition and declare the election void, resulting in unseating the respondent No. 1 from the Himachal Pradesh Legislative Assembly.

The petitioner shall also get his costs from the respondent, assessed at Rs. 1,000.

Sd/-
CHET RAM THAKUR,
JUDGE.

August 2, 1974.

In the Court of Shri M. R. Bhatti, Sub-Judge 3RD Class,
Nalagarh, District Solan, H. P.

PROCLAMATION UNDER ORDER 5, RULE 20, C. P. C.

CIVIL SUIT No. 123/1 OF 1970

1. Ram Kishan, 2. Ram Asra, 3. Sher Singh minor through Shri Ram Kishan guardian of minor sons of Sansaru s/o Gholu, Caste Kanait Rajput, r/o Village Soon Maloun Pr. Malon, Tehsil Nalagarh, 4. Smt. Soni d/o Sansaru w/o Jamuna Dass, 5. Smt. Banto d/o Sansaru w/o Dutta Ram, r/o Dalsham, Pr. Rampur, Tehsil Nalagarh, 6. Smt. Sundri minor w/o Ranbir Chand, r/o Pole-da-Khala, Tehsil Nalagarh, through Ram Kishan s/o Sansaru, 7. Smt. Dwarko w/o Sansaru s/o Gholu, Caste Kanait Rajput Janbal, r/o Soon, Pr. Malon. 8. Sibia, 9. Manshu s/o Gholu s/o Atru, Caste Kanait Rajput Janbal, r/o Village Soon, Pr. Malong, Tehsil Nalagarh
.....Plaintiffs.

Versus

Sunder etc.

.....Defendants.

To

1. Shri Santa s/o Bhandari, Caste Rajput, r/o Village Jai Nagar, Pr. Malon, Tehsil Nalagarh, District Solan.
2. Naraina s/o Shib Ram, r/o Village Soon, Pr. Malon, Tehsil Nalagarh.

It has been proved to the satisfaction of this Court that above named defendants cannot be served in the normal source of service.

Hence this proclamation is hereby issued and the above named defendants are directed to appear in this court on 30-11-1974 at 10 A.M. personally or through a pleader or through an authorised agent. Failing which *ex-parte* proceedings will be taken against the defendants.

Given under my hand and the seal of the Court this 11th day of October, 1974.

Seal.

M. R. BHATTI,
Sub-Judge 3rd Class, Nalagarh.

"I, Nirod Kumar s/o Shri I. S. Rana student of B.Sc. III of Himachal Pradesh University, Simla, resident of Pensioner's line Dharamsala, H. P. have changed my name to Niraj Rana."

Niraj Rana,
C-6 M. L. A. Qrts.,
SIMLA-5.

